

L5DAADON1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 561 (LAP)

11 CV 691 (LAK)

5 STEVEN DONZIGER,

6 Defendant.

BENCH TRIAL

7 -----x

8 New York, N.Y.

9 May 13, 2021

9:30 a.m.

10 Before:

11 HON. LORETTA A. PRESKA,

12 District Judge

13
14 APPEARANCES

15 RITA M. GLAVIN

16 SAREEN K. ARMANI

17 BRIAN P. MALONEY

Special Assistant United States Attorneys

18 LAW OFFICE OF RONALD L. KUBY

Attorneys for Defendant

19 BY: RONALD L. KUBY

RHIDAYA S. TRIVEDI

-AND-

20 OFFIT KURMAN PA

21 BY: MARTIN GARBUS

22 ALSO PRESENT: GRACE GILL, Paralegal

L5DAADON1

(Case called)

THE COURT: Good morning, ladies and gentlemen.

Won't you be seated.

MR. KUBY: Good morning, judge.

THE COURT: Ms. Glavin, I hear tell you have an issue.

MS. GLAVIN: Yes, judge. There's one scheduling request that I would make this morning. I have an issue that has come up in another matter in connection with a filing that has to be done by noon today and what I would request is if the Court is willing for our midmorning break which is usually about five or ten minutes, if we could extend it to an hour so I could attend to that and then shorten our lunch break equally so that I could attend to this matter but that it won't cut into our trial time today.

I've discussed this with Mr. Kuby and he does not have an objection to proceeding that way.

MR. KUBY: I'm sorry. I have absolutely no objection to the prosecutor taking the necessary time she needs to attend to another urgent matter. I have a huge problem with cutting the lunch hour short maybe ten minutes but not a half an hour --

THE COURT: We'll take care of your lunch needs, Mr. Kuby. Do not worry.

MR. KUBY: Thank you, judge.

What are we having?

L5DAADON1

Zelman - Cross

1 THE COURT: I don't know. I was thinking of roast
2 suckling pig. What do you want?

3 MR. KUBY: I was thinking of justice tempered with
4 mercy.

5 THE COURT: Yes, ma'am. What do you need?

6 MS. GLAVIN: Thank you, your Honor.

7 THE COURT: Do we have a witness?

8 MS. GLAVIN: Mr. Zelman.

9 THE COURT: Thank you.

10 MS. GLAVIN: Your Honor, in terms of timing of that --

11 THE COURT: What time do you want?

12 MS. GLAVIN: If we could do it for 11 o'clock.

13 THE COURT: Yes, ma'am.

14 (Witness present)

15 THE COURT: Good morning, Mr. Zelman.

16 I remind you, sir, you are still under oath. I will
17 remind you again to put a microphone cover on that microphone
18 and I will remind you to try to stay as close to the microphone
19 as you can please.

20 DAVID ZELMAN, resumed.

21 CROSS-EXAMINATION

22 BY MS. TRIVEDI:

23 Q. Good morning, Mr. Zelman.

24 A. Good morning.

25 Q. Mr. Zelman, have we ever met before?

L5DAADON1

Zelman - Cross

1 A. I don't -- I can't say we have. I don't recognize you.

2 Q. Spoken on the phone?

3 A. I don't think so.

4 Q. Mr. Zelman, you testified on direct that your agreement
5 with Mr. Donziger pertained to a nine and a half billion dollar
6 judgment against the Chevron Corporation, correct?

7 A. Yes.

8 Q. When was the first time you learned of that judgment?

9 A. When was the first time? Prior to speaking to
10 Mr. Donziger. So, it would have been sometime in the fall of
11 2016.

12 Q. And how did you learn of it?

13 A. We have a mutual friend, John Van Merkenstejn, and John is
14 a supporter of Steven's and introduced us.

15 Q. Mr. Zelman, you've described the litigation between the
16 Ecuadorian people and Chevron as "thrilling", correct?

17 A. Sorry. Say again.

18 Q. Do you remember describing the litigation between the
19 Ecuadorian people and Chevron Corporation as "thrilling"?

20 A. No.

21 Q. Is there anything that might refresh your recollection as
22 to whether you have?

23 A. I'm sorry. I'm not sure what the question is. It sounds
24 like you are asking me about my saying it was thrilling.

25 Q. Um-hmm.

L5DAADON1

Zelman - Cross

1 A. That doesn't register with me in my way.

2 Q. Okay. Well, I'd like to show you a document. It's been
3 premarked Defense I-18.

4 A. Sure.

5 Q. It's an the e-mail from you. Could you take a look at
6 that, Mr. Zelman.

7 A. Yes.

8 Q. What is this document, Mr. Zelman?

9 THE COURT: No. No. You already know how to do it.
10 After reading it, does that refresh your recollection, right?

11 MR. KUBY: Those who can't teach judge.

12 MS. TRIVEDI: Sure. I apologize, your Honor. Good
13 behavior has not been modeled for me.

14 Just kidding, Kuby.

15 Q. Mr. Zelman, does this refresh your recollection?

16 A. It does not but of course it appears that I sent this
17 e-mail.

18 Q. And what is this e-mail, Mr. Zelman?

19 THE COURT: Ma'am, if you want it on the record use
20 your on-the-record voice.

21 MS. TRIVEDI: Got it, judge.

22 A. The subject matter is calling Chevron's bluff.

23 Q. Is this an update as to the progress of the litigation
24 against Chevron, Mr. Zelman?

25 A. I wouldn't have any idea without reading the content of it.

L5DAADON1

Zelman - Cross

1 Q. Do you want to read the second page?

2 A. OK.

3 MS. GLAVIN: Your Honor, objection as to relevance.

4 THE COURT: Yes, ma'am.

5 MS. TRIVEDI: Mr. Zelman's motivation for entering
6 into this agreement with Mr. Donziger is relevant to the terms
7 of that agreement, how it worked, what his understanding was.

8 THE COURT: Why is that relevant to any of the issues
9 on trial here?

10 MS. TRIVEDI: Your Honor, if I have a chance to
11 actually elicit testimony from this witness it will demonstrate
12 that Mr. Zelman understood the specific contingencies that were
13 described in the e-mail.

14 THE COURT: Why is that relevant?

15 MS. TRIVEDI: Your Honor, I believe --

16 THE COURT: The issuance of an order, defendant's
17 disobedience or disregard of the order, defendant's knowledge
18 and willfulness in disobeying the order.

19 MS. TRIVEDI: Your Honor, I'm not hesitating because I
20 don't want to answer your question. I do. I am hesitating --
21 and I do this -- I don't totally know how to handle this but I
22 think it's on Ms. Glavin to ask that the witness be excused
23 before I say something that could affect his testimony. So, I
24 just wanted to create some space for that.

25 THE COURT: Is that all right with you?

L5DAADON1

Zelman - Cross

1 MS. GLAVIN: Fine, your Honor.

2 THE COURT: Mr. Zelman, I am going to ask you to step
3 out of the courtroom for a minute and we'll come and get you
4 when we need you back. It shouldn't be too long.

5 Thank you, sir.

6 (Witness not present)

7 THE COURT: Thank you, Mr. Marshal.

8 Yes, ma'am.

9 MS. TRIVEDI: Couple things, your Honor. The first,
10 there is a very good argument that when Mr. Donziger referenced
11 the words "if I recover my personal fees" in the e-mail
12 exchange with Mr. Zelman, he was referring to the future
13 possibility of the RICO judgment being set aside in the United
14 States pursuant to Rule 60B, which is a motion that
15 Mr. Donziger has always intended to file against Chevron based
16 on fraud on the court and that the Rule 60B contemplates can be
17 filed at any time subsequent to the judgment. And when he
18 wrote the words "if I recover my fees" and if in fact that does
19 reference a world in which the RICO judgment has been set
20 aside, Mr. Donziger is actually free to negotiate and enter in
21 the agreement that he did. It does not violate the RICO
22 judgment. And Mr. Zelman's understanding of the risk that he
23 was taking on when he entered into this agreement and what it
24 meant, what the words "if I recover" meant, what the risk was
25 to him, what the nature of the contingency was is relevant in

L5DAADON1

Zelman - Cross

1 addition to the fact --

2 THE COURT: To what? Why is Mr. Zelman's
3 understanding relevant to Mr. Donziger's state of mind?

4 MS. TRIVEDI: It's not a state of mind question, your
5 Honor. It's about the terms of the agreement they entered into
6 and what the parties understanding was.

7 THE COURT: I'm not understanding why Mr. Zelman's
8 understanding of the word "contingent" in the parties' e-mails
9 is relevant to anything here.

10 MS. TRIVEDI: Your Honor, the risk that he believed he
11 was taking on, his willingness to enter into this agreement
12 regardless or not remember regardless, but as separate from the
13 risk that he might never recover because of his commitment to
14 Rain Forest Conversation, the Amazon people of Ecuador is
15 relevant because if in fact Mr. Donziger was fledging to him, a
16 portion of his fees in the universe where the RICO judgment
17 didn't exist he is innocent of Count Six.

18 THE COURT: Ms. Glavin.

19 MS. GLAVIN: Your Honor, I have no objection to the
20 defense questioning Mr. Zelman about the terms of the agreement
21 he entered into with Mr. Donziger and that it was contingent.
22 What I do object to is putting up Amazon Watch press releases
23 to go through the commitment to Amazon and the Rainforest as
24 that is entirely irrelevant to the issues of the case. But to
25 the extent that the defense wants to ask about what the terms

L5DAADON1

Zelman - Cross

1 of the agreement were, I don't have an objection to that. The
2 specific terms of the agreement as written, if they want to
3 ask, you know, I believe he testified on direct-examination
4 that if he understood there was some risk involved in this but
5 he accepted that risk. He had -- question of the fees.

6 MS. TRIVEDI: Your Honor, lest Mr. Donziger be accused
7 of pleasing Mr. Zelman, I would like to complete the narrative
8 that Mr. Zelman was a sophisticated person. That he was
9 committed to this cause separate and apart from his
10 relationship with Mr. Donziger that he cared about the Amazon.

11 THE COURT: Why does that matter? Who cares?

12 MS. TRIVEDI: Your Honor, it goes to the intelligence
13 with which he entered into this agreement.

14 THE COURT: Why do we care?

15 MS. TRIVEDI: As I previously mentioned like the
16 possibility that Mr. Donziger will be accused of in some ways
17 misleading or misrepresenting himself to Mr. Zelman. You know
18 that possibility remains all around us. And so --

19 THE COURT: I'm not sure that's true.

20 MS. TRIVEDI: Well, I appreciate the -- Mr. Kuby
21 assures me that it also goes to the credibility of Mr. Zelman
22 as to why he would forfeit his services for nothing in return.

23 THE COURT: I don't understand that either. What you
24 just said to me at the beginning of this exchange was that the
25 question was.

L5DAADON1

Zelman - Cross

1 "Q. Is this an update as to the progress of the litigation
2 against Chevron?

3 "A. I wouldn't have any idea without reading the contents of
4 it.

5 What is the relevance of that?

6 MS. TRIVEDI: Your Honor, it's a foundational question
7 with respect to the fact that Mr. Zelman responded to
8 Mr. Donziger's subpoena that this was quote, thrilling, end
9 quote.

10 THE COURT: What it actually sounds like is an effort
11 to get in Mr. Donziger's unsworn testimony about how someone
12 might think that if the RICO judgment were reversed then maybe
13 some day he wouldn't be in contempt. We're not doing that
14 here. This witness is not going to talk about whatever or
15 listen to questions about that.

16 MS. TRIVEDI: Understood, judge.

17 THE COURT: So, if you want to talk to him about what
18 he thought contingent meant go right ahead but we're not going
19 to have unsworn testimony by Mr. Donziger coming in by way of
20 your questions.

21 MS. TRIVEDI: To be clear, there was an e-mail from
22 Mr. Donziger but I understand your Honor's ruling.

23 THE COURT: I am responding to what your argument was.
24 Your argument about some hypothetical time when, perhaps, the
25 RICO judgment was reversed and then maybe that meant

L5DAADON1

Zelman - Cross

1 Mr. Donziger wasn't in contempt. That's on sworn testimony
2 about his state of mind. I'm not having that.

3 MS. TRIVEDI: Understood, judge.

4 THE COURT: Yes, ma'am.

5 Would you bring the witness in, please, ma'am.

6 (Witness is present)

7 THE COURT: Mr. Zelman, come right on in.

8 Ms. Trivedi.

9 Q. Mr. Zelman, you began working with Mr. Donziger --
10 withdrawn.

11 You began providing your services to Mr. Donziger
12 prior to execution of your December 2016 agreement, correct?

13 A. I actually am not certain of that.

14 Q. OK. I'd like to show you -- Well, it's already in
15 evidence, Government 130.

16 MS. GLAVIN: I think you mean "103".

17 MS. TRIVEDI: Sorry. I can be dyslexic with numbers.
18 Yes.

19 Q. Mr. Zelman, if you could read through this.

20 A. Could you make it larger please.

21 (Pause)

22 THE WITNESS: OK. Got it.

23 MS. TRIVEDI: Could I have the question read back?

24 THE COURT: Yes, ma'am.

25 "Q. Mr. Zelman, you began working with Mr. Donziger --

L5DAADON1

Zelman - Cross

1 Withdrawn.

2 You began providing your services to Mr. Donziger
3 prior to execution of your December 2016 agreement, correct?

4 "A. I actually am not certain of that.

5 Q. Mr. Zelman, OK. Let me just repeat the question.

6 Mr. Zelman, you began providing your services to
7 Mr. Donziger prior to execution of your December 2016
8 agreement, correct?

9 A. December.

10 Q. December 2016?

11 A. Again, I'm not sure that this documents that. I don't
12 remember exactly when we started. Typically, I wouldn't start
13 an intervention or interaction with a client until we had an
14 agreement in place and I'm pretty sure that's the case in this
15 case too. Even though I can't make -- this doesn't provide
16 certainty to me that I did anything other than that.

17 Q. Do you remember meeting with Mr. Donziger on November 1st,
18 Mr. Zelman?

19 A. I don't have specific recollection, no, when we met. But
20 does the document suggest I did? I'm asking a question because
21 I really don't.

22 Q. Mr. Zelman, I am going to read to you from an email dated
23 November 2. Hi, Steven. Enjoyed our meeting yesterday.

24 A. Then I definitely met with him on the first.

25 Q. Was that the first model of the Transitional Institute,

L5DAADON1

Zelman - Cross

1 Mr. Zelman?

2 A. Probably not. I don't know if that was my first meeting
3 with him. My first meeting with him would have been for us to
4 explore together whether or not the process, how it would go,
5 et cetera, exchange.

6 Q. But had you already sent him the welcome letter, correct,
7 Mr. Zelman, if you look at the subject line.

8 THE COURT: Counsel, on-the-record voice into the
9 microphone. You are dropping your voice a little bit as you go
10 and it's making it really hard.

11 MS. TRIVEDI: Apologize.

12 THE COURT: Sir, do you need the question again?

13 THE WITNESS: Please.

14 "Q. But had you already sent him the welcome letter,
15 Mr. Zelman, if you would look at the subject line.

16 A. November 2nd there is a welcome letter. So, if there's a
17 document that shows me when I sent that, then I could answer
18 that question.

19 Q. I'm not asking you when you did it, Mr. Zelman. I am
20 asking you if you in fact sent it before you met with
21 Mr. Donziger on November 1st?

22 A. I am not trying to be difficult. It's just that I do not
23 have recollection. So, if there's documentation that suggests
24 I did, I did. And otherwise, I really just don't know the
25 answer to the question.

L5DAADON1

Zelman - Cross

1 Q. No problem, Mr. Zelman. You are not being difficult. If I
2 could show you what's been marked as Defense I-20 perhaps, that
3 would refresh your recollection?

4 A. OK. October 25th welcome letter was sent on October 25th.
5 So, yes, I did on the 25th. So, I did send it to him.

6 Thank you.

7 Q. OK. Mr. Zelman, moving on.

8 Mr. Zelman, you were not Mr. Donziger's psychologist,
9 psychotherapist or acting physician, correct?

10 A. Correct.

11 Q. And you've previously denied having a quote, intimate
12 relationship, end quote, with Mr. Donziger, correct?

13 A. Yes.

14 Q. Now, Mr. Zelman, isn't it true that the services you
15 provide Mr. Donziger were solely in furtherance of the
16 enforcement of the Ecuador judgment?

17 A. Would you repeat that?

18 Q. Isn't it true -- can I repeat it, judge, or do you want to
19 read it back?

20 THE COURT: We can't hear you or understand you. You
21 have to speak clearly into the microphone, ma'am.

22 MS. TRIVEDI: Should I repeat the question, judge, or
23 would you like to read it back?

24 THE COURT: Yes, ma'am. The question, why don't you
25 go ahead and repeat it.

L5DAADON1

Zelman - Cross

1 Q. Mr. Zelman, isn't it true that the services you provided
2 Mr. Donziger were solely in furtherance of the enforcement of
3 the Ecuador judgment?

4 A. The range of topics that we covered were many but I would
5 say that the intent was always to further his ability to
6 function in that way.

7 Q. Isn't it also true that you, independent of your
8 conversations with Mr. Donziger, attempted to secure additional
9 investment in the enforcement litigation, Mr. Zelman?

10 A. How would I have done that.

11 Q. Do you remember introducing Mr. Donziger to an individual
12 named Tim Lappen, L-A-P-P-E-N?

13 A. There was an exchange of emails between myself and Tim. I
14 asked Tim whether he'd like to meet Mr. Donziger. His response
15 was no. So, nothing ever came of that.

16 Q. What was your intention in attempting to introduce
17 Mr. Donziger to Mr. Lappen, Mr. Zelman?

18 A. He is an attorney on the west coast. I wanted to introduce
19 him to Steven personally. I thought that would be something I
20 could do. I do that with many of my clients. I introduce them
21 because they all, they may have mutual interests and support
22 each other.

23 Q. And when you forwarded a litigation financing presentation
24 to David --

25 A. I'm sorry. It's not very -- it's got to be louder or

L5DAADON1

Zelman - Cross

1 something.

2 Q. Sorry, Mr. Zelman.

3 A. That's better. Thank you.

4 Q. Mr. Zelman, do you remember forwarding a litigation
5 financing presentation to an individual named David
6 Wallenstein, W-A-L-L-E-N-S-T-E-I-N?

7 A. I do not -- what kind of document?

8 Q. It was a presentation that had been prepared by other
9 individuals?

10 A. I don't remember sending a document of that nature. I do
11 vaguely remember that David was another person I wanted to
12 introduce to Steven.

13 Q. Do you remember why?

14 A. In David's case it probably would have been for a potential
15 investment.

16 Q. So, Mr. Zelman, I am going to repeat a previous question.
17 Isn't it true that you had attempted to secure additional
18 investment for the enforcement litigation?

19 A. I will say no, I didn't attempt to do it. I was introducing
20 people who might have an interest.

21 Q. Mr. Zelman, do you remember introducing or -- withdrawn --
22 nominating Mr. Donziger for something called the Conscious
23 Capitalism CEO Summit?

24 A. No.

25 Q. Is there anything that would refresh your recollection?

L5DAADON1

Zelman - Cross

1 A. The connection might be with another gentleman Larry Leon
2 who is on the board there.

3 Q. Did you ever exchange emails with that individual?

4 A. Larry? Yes, of course, on a daily basis. About this or
5 about the Conscious capitalism, if you have such a document I
6 probably did, yeah.

7 Q. OK. Mr. Zelman, I'd like to show you what's been premarked
8 Defense Exhibit I-14. If you could take a look at that.

9 A. Which part? The whole thing?

10 Q. The whole thing, please.

11 A. Okay.

12 Q. Mr. Zelman, why did you nominate Mr. Donziger for the
13 Conscious Capitalism CEO Summit?

14 A. The word "nominate" is a little strange to me. In a
15 conversation with Larry Leon who would have made a request for
16 me, do I know anybody who might want to present or be present,
17 I find Steven to be someone who I would like lots of people to
18 know and I would like to make him available to many different
19 audiences. So that there's -- so, that's not strange to me
20 that I would have put him forth to Larry who was on the board
21 to secure speakers or members or visitors to this Conscious
22 Capital Summit.

23 Q. Mr. Zelman, isn't it true that you also provided editorial
24 coaching to support the enforcement effort?

25 A. I believe I did.

L5DAADON1

Zelman - Cross

1 Q. Can you describe those activities in more detail?

2 A. I believe that there were one or more occasions where
3 Steven was crafting a letter or part of a newsletter or
4 something and he asked me what I thought about it and ran it by
5 me and I would give him feedback.

6 Q. Isn't it true, Mr. Zelman, that your feedback was directed
7 at the success of the enforcement effort?

8 A. Do you want to repeat the question, please, into the mic.

9 THE COURT: Question: isn't it true Mr. Zelman that
10 your feedback was directed at the success of the enforcement
11 effort?

12 "A. I'm not trying to make split hairs in the background.
13 That's always the intent. And in the foreground, it's just to
14 communicate for effectively.

15 Q. You need not apologize about splitting hairs to an
16 attorney, Mr. Zelman.

17 A. Well, this is a little unusual for me. I haven't done this
18 before.

19 Q. Me too. Mr. Zelman, isn't true that you at times would
20 encourage Mr. Donziger to move away from a personal narrative
21 and more towards a more professional one?

22 A. I actually don't remember the specifics of those
23 conversations but that would be the kind of thing I might
24 offer.

25 Q. Mr. Zelman, the Transitions Institute was a standardized

L5DAADON1

Zelman - Cross

1 program, correct?

2 A. Yes.

3 Q. It had fixed value as you testified to on direct?

4 A. Yes.

5 Q. You had administered it to other people?

6 A. Many.

7 Q. You referred to participants as clients?

8 A. Yes.

9 Q. Okay. Mr. Zelman, I'd like to show you what's already been
10 admitted evidence as Government Exhibit 105.

11 Mr. Zelman, what is the subject line of this email?

12 A. Draft agreement for professional services.

13 Q. And the agreement was to develop Mr. Donziger's
14 professional capacities with regard to the Ecuador litigation
15 and other matters, correct?

16 A. Sure.

17 Q. Can you state in sum or substance what the other matters
18 were?

19 A. Is that in this -- where is that? Just so I am referring
20 to something.

21 Q. Sorry, Mr. Zelman. I was reading this first line of the
22 draft agreement was drawn as to matters. It's other endeavors?

23 A. And other endeavors. My guess is that was thrown in there
24 as a blanket because this is prior to. So, whatever came up he
25 was aware of the fact that the work that we would do together

L5DAADON1

Zelman - Cross

1 might touch on other subjects.

2 Q. Mr. Zelman, if you could take a look at this second
3 paragraph. Just read to it to yourself and then I am going to
4 ask you some questions.

5 A. Yes.

6 (Pause)

7 THE WITNESS: Okay.

8 Q. Mr. Zelman, the phrase "should they be collected" at the
9 end of the first sentence, what did that mean to you?

10 A. It meant exactly what it says. There was no certainty that
11 those fees would ever be collected.

12 Q. This was a contingent agreement, correct?

13 A. Exactly.

14 Q. Based on a series of future events that you did or did not
15 understand, correct?

16 A. Precisely.

17 Q. Did you have any understanding of the risk, Mr. Zelman, the
18 probability that Mr. Donziger's fees would be collected?

19 A. How about 14 out of 250. In other words, very, very low.

20 Q. Very, very. Mr. Zelman, you were deposed by the Chevron
21 Corporation in this case, were you not?

22 A. Yes.

23 Q. Do you remember saying at your deposition quote, under some
24 circumstances Mr. Donziger would be compensated, end quote?

25 A. I don't remember having said that.

L5DAADON1

Zelman - Cross

1 Q. Is there a document that would refresh your recollection?

2 A. You'd have to show it to me.

3 Q. And if I could show you what's been premarked Defense I-5,
4 page 82, please.

5 I am just going to read from the transcript, please.

6 THE COURT: He reads it.

7 You are the one who taught us all this, right,
8 Mr. Kuby?

9 MS. TRIVEDI: I apologize.

10 THE COURT: All right, Mr. Zelman, counsel is going to
11 ask you to read whatever she just put in front of you and then
12 she will ask you whether that refreshes your recollection as to
13 X, Y, Z and what counsel means by that is does reading this
14 make you say oh, yes now I remember.

15 THE WITNESS: Thank you. So, should I read this?

16 THE COURT: Yes, please, sir.

17 THE WITNESS: I should read the part that's yellowed
18 out; is that correct?

19 Q. If you could begin reading at line 15 through the end of
20 the page thank you?

21 A. Line 15 --

22 THE COURT: No, no. Read it to yourself, sir. It's
23 much easier that way.

24 THE WITNESS: Oh, God, yes. Thank you.

25 Q. Does this document make you say ah-ha. I remember,

L5DAADON1

Zelman - Cross

1 Mr. Zelman?

2 A. I remember this is consistent with something that I would
3 have said. My memory, I don't know.

4 Q. Thank you, Mr. Zelman.

5 Mr. Zelman, is it fair to say that you did not know
6 what the circumstances under which Mr. Donziger would be
7 compensated were?

8 A. That would be very fair.

9 Q. Fair to say that it wasn't crucial to you to get clarity as
10 to those circumstances before you entered into this agreement?

11 A. Very fair.

12 Q. Fair to say that you would have done it for free?

13 A. Yes.

14 Q. Fair to say that you hoped Mr. Donziger would be
15 compensated but that you knew it was a quote, remote
16 possibility, end quote?

17 THE COURT: Slow down.

18 Q. Fair to say that it was a long shot, Mr. Zelman?

19 A. Absolutely.

20 Q. Mr. Zelman, did there come a time when Mr. Donziger
21 informed you that he was barred by court order from collecting
22 fees on this matter?

23 A. I saw an e-mail between himself and myself. I don't know
24 what the date was but, yes.

25 Q. But you knew that prior to that e-mail, didn't you,

L5DAADON1

Zelman - Cross

1 Mr. Zelman?

2 A. That -- sorry. What did I know?

3 Q. That there had been a court order related to Mr. Donziger's
4 ability to collect fees in this matter?

5 A. I don't think I knew that prior to that email.

6 Q. Do you remember saying in your deposition that it didn't
7 matter?

8 A. I don't remember saying that.

9 Q. Is there a document that would refresh your recollection,
10 Mr. Zelman?

11 A. I'm sure you have one.

12 Q. I appreciate the confidence. It's page 95. Could you take
13 a look at what Grace has just highlighted Mr. Zelman and just
14 read it to yourself.

15 A. Sure.

16 (Pause)

17 THE WITNESS: I see that. Okay.

18 Q. Does this document make you say ah-ha, I remember,
19 Mr. Zelman?

20 A. Remember.

21 THE COURT: The question that counsel is asking you,
22 sir, is whether this says, yes, I remember saying in my
23 deposition that it didn't matter that there had been a court
24 order related to Mr. Donziger's ability to collect fees in this
25 matter.

L5DAADON1

Zelman - Redirect

1 A. Yes.

2 Q. And is it your testimony today, Mr. Zelman, that it didn't
3 matter to you?

4 A. Absolutely.

5 Q. Mr. Zelman, did there come a time when you emailed
6 Mr. Donziger that quote, due to all the complications regarding
7 our financial arrangement, I am canceling our deal, end quote?

8 A. Yes.

9 Q. Mr. Zelman, did the complications you referenced have
10 anything to do with the fact that Gibson Dunn had served you
11 with a subpoena?

12 A. No.

13 THE COURT: How are you holding up, sir?

14 THE WITNESS: Fine.

15 MS. TRIVEDI: No further questions, judge.

16 THE COURT: Thank you.

17 Redirect, ma'am?

18 MS. GLAVIN: Yes, your Honor.

19 REDIRECT EXAMINATION

20 BY MS. GLAVIN:

21 Q. Good morning, Mr. Zelman.

22 A. Good morning.

23 Q. During cross-examination the defense counsel asked you if
24 you would have done this for free, services with Mr. Donziger.
25 Your answer was yes; is that correct?

L5DAADON1

Zelman - Redirect

1 A. Yes.

2 Q. Okay. You did not do this services with Mr. Donziger for
3 free; isn't that correct?

4 A. That's correct.

5 Q. And isn't it true that you never offered to Mr. Donziger to
6 give him your services for free; isn't that correct?

7 A. That is correct.

8 Q. Your answer is that is correct?

9 A. Yes.

10 Q. And in fact, Mr. Zelman, part of your agreement with
11 Mr. Donziger was a cash component; is that correct?

12 A. Yes.

13 Q. And did Mr. Donziger pay you the cash?

14 A. Yes.

15 Q. And isn't it true, Mr. Zelman, that you were hoping that
16 Mr. Donziger would get paid his fees from the Ecuadorian
17 judgment so that you would get paid; isn't that true?

18 A. Yes.

19 Q. And since you were subpoenaed by Gibson Dunn -- withdrawn.

20 The defense counsel showed you portions of your
21 deposition transcript during cross; do you remember that?

22 A. Yes.

23 Q. Okay. And do you remember the date that your deposition
24 was taken?

25 A. You told me what it was yesterday but I'm not sure what it

L5DAADON1

Zelman - Redirect

1 is today.

2 Q. Well, I'm going to put up, show you what is Government
3 Exhibit 202?

4 A. February 17?

5 Q. Government Exhibit 202, if you could look at that document,
6 do you still have your exhibit binder in front of you?

7 A. Yeah.

8 Q. If you could look at your exhibit binder, the Government
9 Exhibit 202. If you look at the cover page.

10 A. Yeah.

11 Q. And does that appear to be the deposition transcript of
12 your testimony?

13 A. Yes, it is.

14 Q. Okay. And in looking at the cover page, does that help you
15 remember what the date of your deposition transcript was?

16 A. Yes.

17 Q. When was the date?

18 A. February 27, 2019.

19 Q. And before your deposition testimony, did you receive a
20 subpoena from Gibson Dunn for documents?

21 A. Yes.

22 Q. And with that subpoena did Gibson Dunn have a copy of the
23 RICO judgment with that subpoena?

24 A. I'm sorry. I'm not sure.

25 Q. Before Gibson Dunn subpoenaed you, okay, were you aware or

L5DAADON1

Zelman - Redirect

1 were you aware of the RICO judgment that had been entered
2 against Mr. Donziger?

3 A. I think I was aware that there was such a thing.

4 Q. Had you read it before you were subpoenaed in this case?

5 A. If it was within those documents I would have read it.

6 Q. In terms of within the Gibson Dunn subpoena documents --

7 A. Yes.

8 Q. -- and isn't it true that during your February 27, 2019
9 deposition -- withdrawn.

10 Isn't it true that the first time you actually saw the
11 RICO judgment was when you were subpoenaed by Gibson Dunn?

12 MS. TRIVEDI: I would object, your Honor, as to
13 relevance.

14 THE COURT: We have been a little loose on that and
15 with respect to the cross I'll permit it.

16 Do you have in mind the question, sir?

17 THE WITNESS: Yes.

18 THE COURT: Are you able to answer it?

19 A. I don't recall having seen anything prior to that.

20 Q. And that would have been after you entered into your
21 agreement with Mr. Donziger in December of 2016?

22 A. Yes.

23 Q. Mr. Zelman, if I could show you what is in evidence as
24 Government Exhibit 111 which I believe you remember seeing this
25 in your testimony yesterday?

L5DAADON1

Zelman - Redirect

1 A. Yes.

2 Q. If I could point you to the middle email.

3 A. Yes.

4 Q. This is an email from you to Mr. Donziger on March 26th of
5 2018; do you see that?

6 A. Yes.

7 "Q. And isn't it true that on March 26th of 2018 you wrote to
8 Mr. Donziger and informed him that you had delivered an
9 additional two thousand dollars worth of consulting services
10 which entitled you to more from what might be collected on the
11 claims; is that correct?

12 A. Yes.

13 Q. And you believed you had provided an additional two
14 thousand dollars worth of services to Mr. Donziger, right?

15 A. Yes.

16 Q. And with respect to your relationship with Mr. Donziger,
17 since you wrote that email that you testified about yesterday
18 in April of 2019 which stated that you were canceling your
19 agreement with Mr. Donziger?

20 A. Yes.

21 Q. Since that time you have had communications with
22 Mr. Donziger, correct?

23 A. Yes.

24 MS. TRIVEDI: Objection, your Honor. It's outside the
25 scope.

L5DAADON1

Zelman - Redirect

1 THE COURT: Counsel.

2 MS. GLAVIN: Your Honor, it goes to bias in terms of
3 what Mr. Zelman testified to on cross-examination which
4 actually is contradicted by what he testified on yesterday
5 about having an agreement, a financial arrangement and then
6 it's he didn't care whether or not he'd get paid, then he would
7 have done it for free. I am free to ask him about his
8 relationship with Mr. Donziger and whether he'd spoken with
9 Mr. Donziger in the last 24 hours or any member of his team.

10 MS. TRIVEDI: Your Honor, my questions on cross were
11 as to Mr. Zelman's state of mind when he entered into the
12 agreement. His communications with Mr. Donziger were fair game
13 for direct but it's beyond the scope of cross.

14 THE COURT: What do you say to bias, ma'am?

15 MS. TRIVEDI: Withdrawn.

16 THE COURT: Yes, ma'am.

17 Sir, do you have in mind the question?

18 THE WITNESS: No. I have no idea what the question
19 is.

20 Q. Since 2019 have you maintained a relationship with the
21 defendant, Steven Donziger?

22 A. Yes.

23 Q. And in the last weeks have you had any communications with
24 Mr. Donziger?

25 A. No.

L5DAADON1

Zelman - Recross

1 Q. Have you had any communications in the last week with any
2 member of Mr. Donziger's defense team?

3 A. No.

4 Q. Following your testimony yesterday when you left the
5 courtroom, isn't it true that you hugged Mr. Donziger?

6 A. I might have.

7 MS. GLAVIN: No further questions, your Honor.

8 THE COURT: Thank you.

9 Recross, ma'am?

10 RECROSS-EXAMINATION

11 BY MS. TRIVEDI:

12 Q. Mr. Zelman, why did you hug, Mr. Donziger?

13 A. Thank you for this question.

14 Q. You're welcome.

15 A. I respect him. I admire him. We have a relationship I
16 value quite dearly.

17 Q. Mr. Zelman, is there anything you read in the RICO judgment
18 that changed your opinion of Mr. Donziger?

19 A. No.

20 Q. And was it your understanding that the RICO judgment might
21 be set aside one day?

22 A. Yes.

23 MS. TRIVEDI: Thank you. Mr. Zelman, you have been
24 amazing.

25 THE COURT: Anything else on redirect?

L5DAADON1

Zelman - Recross

1 MS. GLAVIN: No, your Honor.

2 THE COURT: You may step down, sir. Thank you.

3 MS. GLAVIN: Your Honor, the government calls William
4 Thomson.

5 THE COURT: Yes, ma'am.

6 Come on up, sir.

7 WILLIAM THOMSON,

8 called as a witness by the Plaintiff,

9 having been duly sworn, testified as follows:

10 BY MS. GLAVIN:

11 Q. Good morning, Mr. Thompson.

12 A. Good morning.

13 Q. Have you stated your name and spelled it for the record?

14 A. I don't believe so.

15 Q. Okay. If you could state your name and spell it for the
16 court reporter.

17 A. William Thomson, W-I-L-L-I-A-M, last name T-H-O-M-S-O-N.

18 Q. Mr. Thomson, what do you do for a living?

19 A. I am a lawyer.

20 Q. And do you practice with a firm?

21 A. I am with Gibson Dunn & Crutcher.

22 Q. How long have you been with Gibson Dunn & Crutcher?

23 A. I think since fall of 1997.

24 Q. Are you a partner there?

25 A. I am.

L5DAADON1

Zelman - Recross

1 Q. And since when have you been a partner?

2 A. Since January of 2010.

3 Q. And what office of Gibson Dunn are you based in?

4 A. I am in the Los Angeles office.

5 Q. What group are you a lawyer practicing with at Gibson Dunn?

6 A. I am one of the co-chairs of the Transnational Litigation
7 Practice Group and also a member of the Appellate Group.

8 Q. I want to turn your attention to the case Chevron corp v.
9 Donziger, 11 CV 691, Southern District of New York.

10 Are you familiar with that case?

11 A. Yes, I am.

12 Q. How?

13 A. I've worked on it for since its inception.

14 Q. And what was your role in connection with the case, the
15 work that you would do?

16 A. I was principally in charge of all the written products,
17 the court filings in the action.

18 Q. What about with any appellate briefing did you have a role?

19 A. The same role as appellate briefing.

20 Q. And you were representing Chevron in your capacity as a
21 Gibson attorney in this case, correct?

22 A. That's correct.

23 Q. I want to turn your attention to Government Exhibit 1962.
24 Do you recognize that?

25 A. Yes, I do.

L5DAADON1

Zelman - Recross

1 Q. Okay. What is Exhibit 1962?

2 A. This is the supplemental judgment that the district court
3 awarded Chevron with respect to the cost award.

4 Q. When you say the "cost award", are you referring to the
5 \$813,000 money judgment referenced in this exhibit?

6 A. Yes, that's correct.

7 (Continued on next page)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

L5DVDON2

Thomson - direct

1 BY MS. GLAVIN:

2 Q. So for the purposes of your direct, I'll use your language,
3 the cost award, okay?

4 A. Yes.

5 Q. Now, following the issuance of the cost award, did you have
6 any involvement in the post-judgment proceedings in that case,
7 11 CV 691?

8 A. Yes, I did.

9 Q. Okay. What was your involvement?

10 A. The same as, you know, my general involvement in the case.
11 I was in charge of the briefing before the district court and
12 the Court of Appeals.

13 Q. So Mr. Thomson, for the next number of questions, I want to
14 focus you on the time period February 28 of 2018 through
15 September 30th of 2019, okay?

16 A. Okay.

17 Q. Are you familiar with the appeals that Mr. Donziger sought
18 during that period of time in civil case 11 CV 691?

19 A. Yes, I am.

20 Q. Can you describe the appeals that Mr. Donziger pursued
21 during that period of time, February 28th of 2018, through
22 September 30th of 2019?

23 A. During that period, there were three appeals. The first
24 appeal was from the supplemental judgment, the cost award. I
25 believe that was initiated the end of March 2018.

L5DVDON2

Thomson - direct

1 The second appeal was from two orders of Judge Kaplan
2 that disposed of four motions by Mr. Donziger. I believe there
3 was a motion to dismiss Chevron's contempt motion, there's a
4 motion for a declaratory judgment, there was a motion for a
5 protective order, I believe there was also a motion to stay.
6 So that was the second appeal which I believe was initiated at
7 the end of July of 2018.

8 THE COURT: Of '19?

9 THE WITNESS: Of just '18.

10 THE COURT: '18. Thank you, sir.

11 THE WITNESS: Certainly.

12 A. The third appeal was from Judge Kaplan's contempt order.
13 And that would have been initiated, I think, May 27th, give or
14 take, 2019.

15 Q. Mr. Thomson, I want to break each of those three appeals
16 that you've just testified about down and take the first appeal
17 from the cost award. I'm going to show you what is Government
18 Exhibit 7.

19 MS. GLAVIN: Your Honor, this is a certified copy of
20 the docket sheet for Second Circuit Appeal 18-855 that we move
21 into evidence.

22 MR. KUBY: I have an objection not specifically to the
23 document on foundational grounds, I have an objection to this
24 line of questioning. The objection is relevance.

25 As the Court has pointed out before, what the Second

L5DVDON2

Thomson - direct

1 Circuit did or did not do with respect to various appeals is
2 part of the fascinating jurisprudence that makes up the
3 *Donziger* case. If the prosecution is trying to show that
4 Mr. Donziger was capable of filing an appeal and capable of
5 briefing one or not, that's perfectly fine. But to go further
6 into this area is completely irrelevant.

7 THE COURT: Ma'am.

8 MS. GLAVIN: Your Honor, I don't intend to get into
9 what the Second Circuit did or did not do. The purpose of this
10 testimony or the evidence that we seek to elicit from the
11 Mr. Thomson is that Mr. Donziger, contrary to what he told
12 Judge Kaplan, did not seek every avenue of appellate relief,
13 which is a very critical component to the case, and it's
14 something that Mr. Donziger has said that he did do.

15 So that is what I intend to get into with these three
16 appeals in Mr. Thomson's testimony. It's not what the Second
17 Circuit decided, but what Mr. Donziger made a choice to do or
18 not do. And it goes to his knowledge of what was available to
19 him.

20 THE COURT: Counsel.

21 MR. KUBY: My law human is going to take over, if you
22 don't mind.

23 MS. TRIVEDI: Judge, in light of what Ms. Glavin is
24 representing, I'd ask that you reconsider the ruling on the
25 collateral bar. Because if what Mr. Donziger did do in front

L5DVDON2

Thomson - direct

1 of the Second Circuit is becoming relevant -- rapidly relevant
2 in this case from what Ms. Glavin is representing, we would ask
3 your Honor's permission to argue the full scope of that, which
4 is Mr. Donziger's year of begging for clarification in front of
5 Judge Kaplan, year of begging for a civil contempt finding so
6 that he could go on appeal to the Second Circuit.

7 THE COURT: Counsel, I suspect -- I don't really know,
8 but I suspect that much of this is going to demonstrate that
9 Mr. Donziger did not avail himself of the interlocutory appeal
10 protocols, that he did not seek a stay from the circuit, that
11 he did not seek to *mandamus* Judge Kaplan, and the like.

12 MS. TRIVEDI: And your Honor, as I went through
13 yesterday, respectfully, there is no interlocutory appeal of
14 the orders in this case. There is civil -- there is civil
15 contempt and there is appeal. And there is an abundance of
16 case law to support that pathway.

17 THE COURT: All right.

18 We have discussed that. I have ruled.

19 Is there anything else you want to say, Ms. Glavin,
20 about this?

21 MS. GLAVIN: No, your Honor.

22 THE COURT: All right. I will permit it.

23 MS. GLAVIN: Moving into evidence Government Exhibit
24 7, which is a certified copy of the docket sheet for Second
25 Circuit Appeal 18-855.

L5DVDON2

Thomson - direct

1 THE COURT: The objection is overruled. Received.

2 (Government's Exhibit 7 received in evidence)

3 BY MS. GLAVIN:

4 Q. Have you had an opportunity, Mr. Thomson, before today to
5 review that docket sheet?

6 A. Yes, I have.

7 Q. Okay. And for which of the three appeals you mentioned,
8 the docket sheet for -- which is Government Exhibit 7, is for
9 which of those three appeals?

10 A. That's for the cost award appeal, the supplemental
11 judgment.

12 Q. With respect to Mr. Donziger's appeal from the cost award,
13 did Chevron -- withdrawn.

14 After Mr. Donziger appealed the cost award to the
15 Second Circuit, did discovery proceed of Mr. Donziger with
16 respect to aid and enforcing the cost award?

17 A. Yes, it did.

18 Q. Did Mr. Donziger seek a stay from the Second Circuit while
19 his cost award appeal was pending?

20 A. No, he did not.

21 Q. Could he have?

22 A. Certainly.

23 Q. And how would he have done that?

24 A. He would have filed a motion pursuant to Federal Rule of
25 Appellate Procedure 8 asking the Court to impose a stay.

L5DVDON2

Thomson - direct

1 Q. And are you familiar with what is called a supersedeas
2 bond?

3 A. A supersedeas bond, yes.

4 Q. What is that?

5 A. It's a bond that an appellant posts to stay execution of a
6 money judgment.

7 Q. Based on your review of Government Exhibit 7, did
8 Mr. Donziger ever post or file a supersedeas bond?

9 A. No, he did not.

10 Q. Turning your attention to the next appeal that you
11 mentioned, Mr. Donziger's appeal from several motions, I'm
12 going to show you Government Exhibit 2060.

13 MS. GLAVIN: And your Honor, this is from the docket
14 sheet 11 CV 691. Move for admission.

15 THE COURT: Received.

16 (Government's Exhibit 2060 received in evidence)

17 MR. KUBY: I'm sorry, I said when -- if I had an
18 objection to the docket sheet, I would rise.

19 THE COURT: Yes, sir.

20 MR. KUBY: And this is my very first one.

21 THE COURT: Yes, sir.

22 MR. KUBY: I object to this document being introduced
23 into evidence. I object to this line of examination. I just
24 want to note, yesterday, before this testimony, this Court
25 imposed the collateral bar rule on the defense. And I

L5DVDON2

Thomson - direct

1 believe -- although my hearing is not what it should be -- this
2 Court, in imposing that bar, informed my Sister Trivedi that
3 Mr. Donziger did not avail himself of opportunities that he had
4 to stay, to appeal, there were avenues that were still open to
5 him that he did not pursue; therefore, among other reasons, I
6 am imposing the collateral bar rule. That's at least what I
7 understood your ruling to be.

8 Now, after that ruling or decision, if you will, now
9 we're taking evidence on it. So I don't want to say verdict
10 first, then trial, but it kind of has that feel to it, Judge.
11 You already did this. You already ruled on this. We objected.
12 We complained. And now we're trying it. I don't get it. I
13 legitimately don't, Judge.

14 THE COURT: Thank you.

15 Ma'am.

16 MS. GLAVIN: Your Honor, I'm eliciting precisely what
17 causes the collateral bar doctrine to apply, which is that
18 Mr. Donziger -- if the defense is willing to stipulate that
19 from February 28th of 2018, through September 30th of 2019,
20 Mr. Donziger never sought a stay in the Second Circuit of the
21 discovery, Mr. Donziger never availed himself of the avenue of
22 a *mandamus* in the Second Circuit, I think we may be there.

23 MR. KUBY: Judge, I don't want to accuse the Court of
24 premature adjudication, but you ruled on this yesterday based
25 on facts that presumably had been put before you in the course

L5DVDON2

Thomson - direct

1 of this trial. You imposed the collateral bar rule precisely
2 because you found Mr. Donziger did not do the things that you
3 found he could have done.

4 And now, after you've ruled and after the witness who
5 I wanted to question has left, because I did not get to do
6 cross-examination that would have implicated the collateral bar
7 rule, now Ms. Glavin is trying to elicit the very facts that
8 she thinks are necessary for your ruling. But obviously you
9 didn't because you ruled already. That was yesterday.

10 Could we get on with today?

11 THE COURT: What do you say to counsel's offer of a
12 stip?

13 MS. TRIVEDI: Your Honor, they produced a single case
14 where a defendant in the post-judgment discovery context
15 received any relief on *mandamus* from the Second Circuit.

16 We will so stip.

17 THE COURT: All right.

18 MR. KUBY: This is a legal -- I'm sorry, Judge.

19 This essentially is no longer a factual issue. The
20 Court made a legal ruling based on the facts before it. And
21 after Mr. Donziger is convicted and after he's packed off to
22 wherever he's going, we'll adjudicate this in front of the
23 Second Circuit. You may be right, you may be wrong, or they
24 may not even care. But this is not a legal issue, and it's
25 just not appropriate to take up more trial time eliciting facts

L5DVDON2

Thomson - direct

1 that had to have been elicited before the Court ruled
2 yesterday.

3 THE COURT: Counsel, my ruling yesterday was based on
4 the briefing both sides submitted on the government's motion *in*
5 *limine* many, many months ago.

6 MR. KUBY: Yeah.

7 THE COURT: And which -- I don't recall, forgive me,
8 Mr. Kuby, if you were on the case or not --

9 MR. KUBY: No, happily not.

10 THE COURT: -- but defense side asked the Court to
11 stay ruling on that matter.

12 MR. KUBY: Yes.

13 THE COURT: So that's what it was based on, it was not
14 based on the evidence in this case.

15 MR. KUBY: I know. We did ask and we knew the day
16 would come when the Court made a ruling.

17 THE COURT: Yes, ma'am -- yes, sir.

18 MR. KUBY: It's okay, I'm trying to be more gender
19 nonbinary. Not doing well.

20 And we knew the day would come when you would make a
21 ruling. You made that ruling. So if we're going to reopen it
22 factually, that is to say, the Court actually didn't have
23 sufficient facts when it imposed the collateral bar rule, then
24 we can get Ms. Champion back here and we can have a -- I won't
25 call it a rerun, I'll call it a sequel.

L5DVDON2

Thomson - direct

1 But, again, I'm not sure what it is -- I'm not sure
2 why the private prosecutor is being allowed to elicit facts to
3 support a ruling this Court made, after the Court made the
4 ruling. I object.

5 THE COURT: Counsel, all right. I do not hear you
6 accepting the offer of a stipulation and, therefore, I will
7 allow it to complete the record.

8 MR. KUBY: Okay.

9 THE COURT: I can't remember what the question was.

10 MS. GLAVIN: I will help refresh Mr. Thomson.

11 BY MS. GLAVIN:

12 Q. So Mr. Thomson, I believe we were turning to the second
13 appeal you had discussed. We had put on the screen what is
14 Government Exhibit 2060, which I understand is in evidence.

15 Is this a notice of appeal from Mr. Donziger?

16 A. Yes, it is.

17 Q. What's this notice of appeal of?

18 A. This is a notice of appeal from two orders from Judge
19 Kaplan that disposed of four motions by Mr. Donziger. As I
20 mentioned before, there was a motion to dismiss, a contempt
21 motion by Chevron, there was a motion for a declaratory
22 judgment, there was a motion for a protective order, and there
23 was a motion for -- to stay.

24 Q. And I just want to focus, if we could -- Mr. Donziger cites
25 in this notice of appeal two docket entries, 2045 and 2056. If

L5DVDON2

Thomson - direct

1 we could go just to have you look at Government Exhibit 2045.

2 When you mentioned before that Mr. Donziger's notice
3 of appeal was from Judge Kaplan's decision denying his motions
4 for declaratory judgment, dismissal, protective order, and a
5 stay, is this what you were referring to?

6 A. Yes, that's correct.

7 Q. And going back to Government Exhibit 2060, there is another
8 order referenced, docket 2056. Do you see that?

9 A. I see the reference, yes.

10 MS. GLAVIN: Okay. And if we could pull up Government
11 Exhibit 2056, which is in evidence. And go to the last page,
12 what Judge Kaplan's order was.

13 Q. Do you see that?

14 A. I do.

15 Q. And what was Judge Kaplan directing Mr. Donziger to do?

16 A. To produce documents pursuant to specific requests,
17 numbers, in documents request for production, as well as to
18 serve full and complete answers to certain paragraphs in
19 Chevron's information subpoena.

20 Q. And by what date was Mr. Donziger to comply with that
21 order?

22 A. By August 15, 2018.

23 Q. I show you what is Government Exhibit No. 8.

24 MS. GLAVIN: Your Honor, this is a certified copy of
25 the Second Circuit Court of Appeals docket sheet for docket

L5DVDON2

Thomson - direct

1 18-2191, which we move into evidence.

2 MR. KUBY: Same objection to document and line of
3 questioning.

4 THE COURT: Same ruling.

5 Objection overruled. Received.

6 (Government's Exhibit 8 received in evidence)

7 Q. Mr. Thomson, have you had an opportunity before your
8 testimony today to review this docket sheet for Second Circuit
9 Appeal 18-2191?

10 A. Yes, I have.

11 Q. And what docket sheet is this for, as it relates to
12 Mr. Donziger's appeals between February 28 of 2018 and
13 September 30th of 2019?

14 A. This is the docket sheet for the second appeal.

15 Q. The appeal --

16 A. From the four interlocutory orders.

17 Q. Now, with respect to the second appeal, was there a
18 relationship between the second appeal and the first appeal in
19 the Second Circuit?

20 MR. KUBY: Objection. Leading.

21 THE COURT: I'm sorry?

22 MR. KUBY: Objection. Leading.

23 THE COURT: It calls for a yes or a no.

24 MS. GLAVIN: Was there a relationship.

25 MR. KUBY: I understand that. This is her witness. I

L5DVDON2

Thomson - direct

1 didn't think she was entitled to simply ask yes-or-no
2 questions. They are not foundational.

3 I think the proper form of the question is: What
4 relationship, if any, was there between X and Y? That's at
5 least what I remember from evidence class, Judge.

6 THE COURT: If you insist, I will make her ask it that
7 way.

8 MS. GLAVIN: I'll do it.

9 THE COURT: But I actually don't think there's
10 anything wrong with asking a question that does not signal the
11 answer. The answer could be yes, it could be no.

12 MR. KUBY: All right. I'll take that in mind in
13 future objections and I withdraw this one.

14 THE COURT: Yes, sir. Thank you.

15 BY MS. GLAVIN:

16 Q. Mr. Thomson, what relationship, if any, was there between
17 appeal 18-855 and appeal 18-2191?

18 A. The two appeals were consolidated on Mr. Donziger's motion.

19 Q. And what does that mean?

20 A. It means they were to be considered at the same time as
21 part of the same proceeding.

22 Q. And looking at Government Exhibit 8, if I could focus your
23 attention on Second Circuit docket entry 36-1. It should say
24 36. And what occurred on October 5th of 2018?

25 A. Mr. Donziger filed a motion in the Second Circuit to

L5DVDON2

Thomson - direct

1 consolidate the appeals and to extend his time to file his
2 opening brief.

3 THE COURT: Keep your voice up, sir, please.

4 THE WITNESS: I'm sorry.

5 THE COURT: Sorry. I didn't look into the microphone
6 either. Keep your voice up.

7 THE WITNESS: Sorry, your Honor.

8 BY MS. GLAVIN:

9 Q. And did you work on this appeal personally, Mr. Thomson, on
10 behalf of Chevron Corp.?

11 A. Yes, I did.

12 Q. And if I could focus your attention to Second Circuit
13 docket entry 40. Could you explain to us what happened in this
14 docket entry.

15 A. In this entry, the Second Circuit grants Mr. Donziger's
16 motion, consolidates the appeals, and grants his motion to
17 extend the time to file his opening brief.

18 Q. In this appeal, was any request made for expedited
19 briefing?

20 A. No.

21 Q. And when I refer to a request made for expedited briefing,
22 can you explain what "expedited briefing" means?

23 A. It would mean that in this case the appellant would ask the
24 Court to set a shorter time schedule for the briefing and
25 potentially for the oral argument to try to get the appeal

L5DVDON2

Thomson - direct

1 resolved more quickly than would happen in the normal course.

2 Q. And in connection with the consolidated appeals 18-855 and
3 18-2191, did Mr. Donziger ever make a request to the Second
4 Circuit for any type of emergency relief?

5 A. No.

6 Q. And when I say "emergency relief," what does that mean to
7 you in terms of Second Circuit parlance?

8 A. Well, it could include a motion to expedite the appeal, it
9 could include other extraordinary relief, if there were
10 conditions to petition for writ of *mandamus*, for example, a
11 stay is also considered extraordinary relief.

12 Q. Did Mr. --

13 MR. KUBY: Judge, I have an application to strike the
14 last -- am I not speaking loudly enough?

15 THE COURT: No, no. I'm greeting one of the CSOs at
16 the back.

17 MR. KUBY: Cool.

18 It's nice to see everybody be back in court again.

19 THE COURT: Isn't it?

20 MR. KUBY: I have to say that.

21 THE COURT: Application to strike the last --

22 MR. KUBY: Right. It was fabulously instructive to
23 me, as a lawyer, to listen to Mr. Thomson's discussion of the
24 nature of appellate litigation.

25 THE COURT: He can teach all of us, right?

L5DVDON2

Thomson - direct

1 MR. KUBY: Say what again, Judge?

2 THE COURT: He can teach all of us.

3 MR. KUBY: Yeah, yeah, yeah.

4 And I'm perfectly willing to listen to it, as long as
5 when I start asking him questions, we're not going to default
6 back to the Anne Champion, Are you asking me for my mental
7 impressions as an attorney mode. I'm not seeing that problem
8 here, so I just want to flag it in advance, because I have some
9 questions too about Second Circuit practice, not just for my
10 own education, but relevant to this trial.

11 THE COURT: I'm certain Mr. Thomson is looking forward
12 to them.

13 MR. KUBY: Well, I am. Thank you.

14 I mean, look, it's a CLE.

15 THE COURT: Is this a convenient time to break?

16 MS. GLAVIN: Oh, yes, your Honor. Thank you.

17 THE COURT: All right. Half hour or so?

18 MS. GLAVIN: Yes, I think maybe half hour, 45 minutes.

19 THE COURT: All right.

20 MS. GLAVIN: Oh, half hour for the break, yes, your
21 Honor.

22 THE COURT: Okay. 11:30, friends. Thank you.

23 (Recess)

24 THE COURT: All right. Are we ready to go.

25 On the record, Ms. Glavin.

L5DVDON2

Thomson - direct

1 MS. GLAVIN: Yes, your Honor.

2 BY MS. GLAVIN:

3 Q. Mr. Thomson, before the break, we were discussing the
4 consolidated appeals 18-2191, 18-855. In that consolidated
5 appeal, did Mr. Donziger ever make a motion to the Second
6 Circuit seeking a stay of the district court proceedings while
7 the consolidated appeal was pending?

8 A. No, he did not.

9 Q. Did Mr. Donziger ever make a motion -- withdrawn.

10 Did Mr. Donziger ever file a petition for a writ of
11 *mandamus* in the Second Circuit in connection with the
12 consolidated appeal?

13 A. No, he did not.

14 Q. Mr. Thomson, you mentioned a third appeal that Mr. Donziger
15 filed or a third appeal that Mr. Donziger pursued with the
16 Second Circuit between February 28th of 2018 and September 30th
17 of 2019. You mentioned that was from the May contempt
18 decision?

19 A. Yes, that's correct.

20 Q. I show you -- we could pull up what is in evidence as
21 Government Exhibit 2209. Go to the second page.

22 Mr. Thomson, what do you recognize this as?

23 A. This is Judge Kaplan's order holding Mr. Donziger in
24 contempt.

25 Q. I show you what is Government Exhibit 2211.

L5DVDON2

Thomson - direct

1 MS. GLAVIN: Your Honor, I move for admission of
2 Government Exhibit 2211, which is on the docket for 11 CV 691.

3 MR. KUBY: Same objection to document and line of
4 questioning.

5 THE COURT: Same ruling. Objection overruled.

6 Received.

7 (Government's Exhibit 2211 received in evidence)

8 BY MS. GLAVIN:

9 Q. And Mr. Thomson, what is this document?

10 A. This is Mr. Donziger's notice of appeal from the contempt
11 order dated May 23rd, 2019, and its accompanying supplemental
12 judgment.

13 Q. That was at docket entry 2210?

14 A. Yes, that's correct.

15 Q. I show you what is Government Exhibit No. 9.

16 MS. GLAVIN: Your Honor, this is a certified copy of
17 the docket sheet for Second Circuit case 19-1584, which we
18 would move into evidence.

19 MR. KUBY: Same objection.

20 THE COURT: Same ruling. Received.

21 (Government's Exhibit 9 received in evidence)

22 Q. Mr. Thomson, what appeal is this docket sheet for? We can
23 scroll through the second page, you can look at it.

24 A. Well, it's the docket sheet for the appeal from the
25 district court's contempt order dated May 24, 2019.

L5DVDON2

Thomson - direct

1 Q. Sir, did you say dated May 24th?

2 A. I believe that's right, but I could be wrong. The date of
3 the order. The date of the appeal was May 28th.

4 Q. If you could take a look at docket entry number 2. Oh, let
5 me take a look. I see. You're looking at docket entry number
6 3.

7 A. May 23.

8 Q. The opinion was May 23rd.

9 A. Correct.

10 Q. Now, following Judge Kaplan's issuance of his -- of the
11 contempt decision on May 23rd of 2019, I'm going to show you
12 what is Government Exhibit 2219 which is in evidence.

13 Have you had an opportunity to review this order by
14 Judge Kaplan before today?

15 A. Yes, I have.

16 Q. Can you summarize what Judge Kaplan is finding or ordering
17 here?

18 A. The Court says that it inadvertently failed to dispose
19 fully of Chevron's motion to hold Donziger in contempt. In
20 particular, the Court now finds that Mr. Donziger was in
21 contempt of paragraph 5 of what's known as the forensic
22 inspection protocol. That finding was not included, as the
23 order notes in the earlier May 23rd/May 24th order and
24 judgment.

25 Q. And do you recall what paragraph 5 of the forensic protocol

L5DVDON2

Thomson - direct

1 directed?

2 A. I do.

3 Q. Okay. What was that?

4 A. That was for Mr. Donziger to turn over his electronic
5 devices to the neutral forensic expert appointed by the Court.

6 Q. With respect to this order or civil contempt finding which
7 is in Government Exhibit 2219, following that finding, did
8 Mr. Donziger notice an appeal from that order?

9 A. No, he did not.

10 Q. When did Mr. Donziger file his brief -- well, withdrawn.

11 I'm going to show you what is Government Exhibit 317.
12 Do you recognize this?

13 A. I do.

14 Q. What is it?

15 A. This is Mr. Donziger's opening brief and consolidated
16 appeal dated September 9th, 2019.

17 Q. You mentioned Mr. Donziger's opening brief in the
18 consolidated appeal. What relationship, if any, did case
19 number 19-154, which is reflected in docket sheet for
20 Government Exhibit 9, what relationship, if any, did that
21 appeal have with consolidated appeals 18-855 and 18-2191?

22 A. Mr. Donziger moved in the Second Circuit to have the Court
23 of Appeals consolidate the appeals so they were all decided
24 together in the same proceeding.

25 Q. So when you say "consolidated," are you referring to the

L5DVDON2

Thomson - direct

1 three appeals that Mr. Donziger pursued in the circuit between
2 February 28th of 2018 and September 30th of 2019?

3 A. Yes, that's correct.

4 Q. So they were all going to be handled as one appeal?

5 A. As one appeal by one panel, right.

6 Q. And did Mr. Donziger file a brief in connection with appeal
7 19-1584 from the civil contempt findings? Did he file a brief?

8 A. Yes, he did.

9 Q. Okay. And what is Government Exhibit 317?

10 A. That's the caption page for the brief.

11 MS. GLAVIN: Your Honor --

12 Q. And is this the brief? We can go to the second page.

13 A. I believe so.

14 MS. GLAVIN: The government moves for admission of
15 Exhibit 317.

16 MR. KUBY: Same objection to the line of questioning.

17 And also, I would note that yesterday the Court ruled,
18 as I understood it -- and again, if I'm wrong, I don't mean to
19 put words in the Court's mouth -- that what the Second Circuit
20 ruled on this has nothing to do with any of the issues in the
21 case. That's what I thought I heard. I'm not sure why the
22 brief does, but I'm sure I'll be enlightened.

23 THE COURT: No doubt about it.

24 Overruled. Received.

25 (Government's Exhibit 317 received in evidence)

L5DVDON2

Thomson - direct

1 BY MS. GLAVIN:

2 Q. If, Mr. Thomson, we could go to page 12, ECF page 12 of
3 Mr. Donziger's brief. And I'll read out loud:

4 Statement of the issues.

5 One. Whether the district court found appellant in
6 civil contempt for participating in litigation financing
7 efforts and paying his fees out of that financing; and where
8 appellant so acted in conformity with earlier assurances issued
9 by the district court itself; and where the district court
10 failed to reconcile its assurances with the radically different
11 interpretation of the applicable injunction it subsequently
12 used to find appellant in contempt, is the contempt finding
13 based on an unclear and ambiguous underlying order and, thus,
14 an abuse of discretion?

15 Number two. Where this Court affirmed the district
16 court's merits determination in the action based on the
17 confined nature of its injunction relief, which did not
18 invalidate or disturb an underlying Ecuadorian environmental
19 judgment being enforced in foreign jurisdictions, is the
20 district court's subsequent modification and expansion of the
21 injunctive relief an abuse of discretion and a violation of the
22 mandate rule of the law of the case doctrine?

23 Mr. Thomson, did I read correctly what Mr. Donziger
24 said the issues were on appeal from Judge Kaplan's May 2019
25 contempt findings?

L5DVDON2

Thomson - direct

1 A. Yes.

2 Q. Did Mr. Donziger, in his brief, challenge Judge Kaplan's
3 finding of civil contempt for failure to provide a list of his
4 messaging and document management accounts and devices as
5 ordered by Judge Kaplan on March 5th of 2019?

6 A. No, he did not.

7 Q. Did Mr. Donziger in his brief challenge Judge Kaplan's
8 finding of civil contempt for failure to surrender his devices
9 to the neutral forensic expert for imaging as directed by
10 paragraph 5 of the March 5th, 2019 forensic protocol?

11 MR. KUBY: Judge, I object to the question and I
12 object as to form.

13 Mr. Thomson is one of the most superbly educated
14 humans I've ever seen in a courtroom. And I would so much
15 rather hear his explanation of what was done and what was not
16 done rather than Ms. Glavin's questions. So if she could just
17 ask him to explain what was done and what was not done with
18 respect to X, with respect to Y, that would be enlightening and
19 proper, I think.

20 THE COURT: Okay. On the other hand, this is a bench
21 trial, and this method of questioning does seek to shorten our
22 proceedings.

23 MR. KUBY: Well, it does. And I accept that. But
24 still -- okay. I'll sit.

25 THE COURT: Yes, sir.

L5DVDON2

Thomson - direct

1 MR. KUBY: I'll be good. I'll sit.

2 THE COURT: Do you have in mind the question, sir?

3 THE WITNESS: No, I don't, your Honor.

4 THE COURT: Did Mr. Donziger in his brief challenge
5 Judge Kaplan's finding of civil contempt for failure to
6 surrender his devices to the neutral forensic expert for
7 imaging as directed by paragraph 5 of the March 5th, 2019
8 forensic protocol?

9 A. As Chevron pointed out in its appellee's brief, no, he did
10 not.

11 Q. Did Mr. Donziger in his brief, which is Government Exhibit
12 317, challenge Judge Kaplan's finding of civil contempt for
13 failure to assign to Chevron the interest, the contingent
14 interest from the 2017 ADF agreement?

15 A. As Chevron noted in its appellee's brief, no, he did not.

16 Q. Did Mr. Donziger challenge Judge Kaplan's finding of civil
17 contempt for pledging or assigning a portion of his own
18 personal interest in the Ecuadorian judgment in exchange for
19 personal services rendered?

20 A. As Chevron noted in its appellee's brief, no, he did not.

21 Q. If we could go to ECF page 4 of Mr. Donziger's brief. At
22 ECF page 8 of Mr. Donziger's brief, tell me if I'm reading what
23 Mr. Donziger wrote correctly:

24 Rather, as appellant testified repeatedly under oath
25 below, he thought it was clear and unquestionable that

L5DVDON2

Thomson - direct

1 continued litigation financing --

2 THE COURT: Whoops, whoops. Clear and unquestionable.

3 Q. -- that continued litigation financing was allowed, that
4 the RICO injunction's "constructive trust" targeted only
5 property that might be received in a recovery on the Ecuador
6 judgment; and that the only "monetization" potentially
7 prohibited were acts seeking to monetize appellant's or
8 codefendant's personal contingency interests in the Ecuador
9 judgment.

10 Is that what Mr. Donziger wrote in his brief?

11 A. Yes, it is.

12 Q. If we could go to the cover page of the brief, page 1.

13 Who represented Mr. Donziger on this appeal?

14 A. Well, he lists himself as *pro se*, as representing himself;
15 although I believe he has a footnote where he acknowledges that
16 he was assisted by an unnamed attorney.

17 Q. And Mr. Thomson, in the course of the civil RICO
18 litigation, 11 CV 691, have you seen briefs or testimony by
19 Mr. Donziger indicating that he is an attorney?

20 A. Yes, at one time.

21 Q. And did Mr. Donziger indicate -- withdrawn.

22 Are you aware of statements by Mr. Donziger in his
23 briefs or testimony in connection with the civil litigation
24 that he is a graduate of Harvard Law School?

25 A. I'm familiar with such statements, yes.

L5DVDON2

Thomson - direct

1 Q. And if we could go back to docket sheet Government Exhibit
2 9. Again, this is with respect to appeal 19-1584 from the May
3 23rd, 2019 contempt decision.

4 Did Mr. Donziger in this appeal, between May 23rd of
5 2019 and September 30th of 2019, did Mr. Donziger seek any stay
6 from the Second Circuit?

7 A. No, he did not.

8 Q. Did Mr. Donziger in that time period seek any *mandamus*
9 relief?

10 A. No, he did not.

11 Q. And in the time period that I had focused you on during the
12 course of your direct, which would be February 28th of 2018 to
13 September 30th of 2019, did Mr. Donziger ever seek a stay in
14 the Second Circuit?

15 A. No, he did not.

16 Q. Did he ever seek *mandamus* relief in that time period in the
17 Second Circuit?

18 A. No, he did not.

19 Q. Did he ever seek expedited briefing in the Second Circuit?

20 A. No, he did not.

21 Q. I'm going to show you what is Government Exhibit 2108 in
22 evidence. We could go to Judge Kaplan's -- the portion of
23 Judge Kaplan's order.

24 Are you familiar with this order, Mr. Thomson?

25 A. Yes.

L5DVDON2

Thomson - direct

1 Q. And what did Judge Kaplan direct Mr. Donziger to do in this
2 order?

3 A. Judge Kaplan orders Mr. Donziger to comply with certain
4 discovery requests that Chevron had propounded.

5 Q. And with respect to paragraph 1, did the Court make a
6 finding as to whether or not Mr. Donziger had waived privilege?

7 A. Yes, the Court notes that both Donziger has waived or
8 forfeited any claim of privilege to responsive documents and
9 information that otherwise might have applied.

10 Q. Did Mr. Donziger notice an appeal from this October 18,
11 2018 order?

12 A. No, I don't believe so.

13 Q. Did he seek *mandamus* relief?

14 A. No, he did not.

15 Q. Did he seek a stay?

16 A. No, he did not.

17 Q. Going to Government Exhibit 2172, do you recognize this
18 document, Mr. Thomson?

19 A. Yes, I do.

20 Q. What is this?

21 A. This is the forensic inspection protocol that Judge Kaplan
22 entered.

23 Q. And with respect to paragraph 4 of the protocol, can you
24 summarize what Judge Kaplan ordered Mr. Donziger to do?

25 A. Within three business days, Mr. Donziger was ordered to

L5DVDON2

Thomson - direct

1 provide the neutral forensic inspection expert that the Court
2 had appointed, to identify for that neutral all of his
3 electronic devices that he had used since March 4th, 2012, as
4 well as any online accounts that he had used during that
5 period.

6 Q. And if you could go to paragraph 5 of that protocol.

7 What did Judge Kaplan order Mr. Donziger to do?

8 A. Mr. Donziger was ordered to turn over the electronic
9 devices to the neutral forensic expert.

10 Q. At what day and time?

11 A. On March 18, 2019. Is there a time? I'm not sure. At 12
12 p.m.

13 Q. Did Mr. Donziger notice an appeal from this order which is
14 Government Exhibit 2172?

15 A. No, he did not.

16 Q. Did Mr. Donziger seek a stay of this order with the Second
17 Circuit?

18 A. No, he did not.

19 Q. Did he seek *mandamus* relief with the Second Circuit?

20 A. No, he did not.

21 Q. Showing you what is Government Exhibit 2232 in evidence, if
22 you go to Judge Kaplan's order on the last page. Mr. Thomson,
23 what did Judge Kaplan direct Mr. Donziger to do in this order?

24 A. That on or before June 12th, 2019 at 4 p.m., he was to
25 surrender to the Clerk of the Court each and every passport

L5DVDON2

Thomson - direct

1 issued to him by each and every nation to have issued a
2 passport to him.

3 Q. Did Mr. Donziger notice an appeal of this order with the
4 Second Circuit?

5 A. No, he did not.

6 Q. Did he seek a stay of this order with the Second Circuit?

7 A. No, he did not.

8 Q. Did he seek *mandamus* relief with the circuit?

9 A. No, he did not.

10 Q. Mr. Thomson, prior to the -- withdrawn.

11 Prior to the post-judgment proceedings that occurred
12 after February 28, 2018, had Mr. -- withdrawn.

13 Prior to the post-judgment proceedings that occurred
14 after February 28th of 2018, are you familiar with whether or
15 not Mr. Donziger had sought stays in the Second Circuit of
16 district court orders in connection with the civil litigation
17 that Chevron had against Mr. Donziger here in the Southern
18 District?

19 A. Yes.

20 Q. Do you have some examples?

21 MR. KUBY: Judge, I'm going to object to the examples,
22 because this goes into the question of the 1782s which took
23 place in 2010. And if Ms. Glavin wants to go there, we can go
24 there, but there's extensive cross-examination of this witness
25 about the things this witness did or did not do.

L5DVDON2

Thomson - direct

1 To the extent that Ms. Glavin wishes to prove that
2 Mr. Donziger had filed applications for a stay in the past back
3 in 2010, when he was represented by a legion of attorneys, I
4 think she just did that. And I'll narrow my cross.

5 But to the extent that she intends to poundingly
6 recite things that were done by Mr. Donziger through counsel
7 back in 2010, I think it is unnecessary, irrelevant, and just,
8 you know, a waste of the time that the Court does not wish to
9 waste.

10 THE COURT: Yes, ma'am.

11 MS. GLAVIN: With respect, I think Mr. Kuby's
12 arguments fall into a couple of buckets, the first being that
13 Mr. Kuby is representing to me or I suppose he may be warning
14 me of some brutal cross-examination that he may be going into.
15 I accept that.

16 Number two.

17 THE COURT: Easy for you to say; you're not the
18 witness.

19 MR. KUBY: He seems like a nice guy, Judge.

20 MS. GLAVIN: I think Mr. Thomson will answer
21 Mr. Kuby's questions truthfully, to the extent they are within
22 the rules of evidence and they don't infringe on
23 attorney-client privilege. That's Mr. Kuby's first point.

24 To his second point about whether it is relevant,
25 Mr. Donziger was on notice in 2010 of the Southern District's

L5DVDON2

Thomson - direct

1 Local Civil Rule 26.2, which required him to provide a
2 privilege log. He did not do that. And Judge Kaplan found a
3 waiver at that time. Mr. Donziger then went to the circuit for
4 a stay. He got a temporary stay; he didn't get the full stay.
5 It went back to Judge Kaplan. Judge Kaplan then reiterated
6 that the waiver had occurred for failure to comply with Rule
7 26.2 and the privilege log. Mr. Donziger, through his lawyers,
8 went back to the Second Circuit seeking a stay. And that was
9 denied and the merits panel denied the appeal.

10 That goes to Mr. Donziger's state of mind with respect
11 to his failure to produce a privilege log during the
12 post-judgment discovery proceedings and the waiver that occur.
13 Mr. Donziger made statements which are in evidence before the
14 Court that he was -- that this was an illegal order and he
15 could not ethically do this. This goes to Mr. Donziger's state
16 of mind that he was on notice of what the rules were. This had
17 happened before, and actually his devices had been imaged
18 before. And Mr. Donziger chose the course that he did.

19 We have heard argument that Mr. Donziger was going
20 into civil contempt so that he could appeal. And Mr. Donziger
21 knew that he had other avenues. So it goes to state of mind.
22 And I think we can go through that fairly quickly.

23 There is also a second instance in which Mr. Donziger
24 in this litigation went to the Second Circuit with a
25 *mandamus* --

L5DVDON2

Thomson - direct

1 MR. KUBY: You know what? I'm going to withdraw the
2 objection at this point. I mean, this is just a gross
3 mischaracterization of the record. But rather than hear
4 Ms. Glavin's version of it, I'll withdraw the objection.

5 I'll sit down, I'll shut up, and then when it's my
6 turn to talk, I'll talk again.

7 THE COURT: Yes, sir.

8 MR. KUBY: Right?

9 BY MS. GLAVIN:

10 Q. Mr. Thomson, I think we had asked if you were aware of
11 instances in which Mr. Donziger in the litigation that Chevron
12 had against Mr. Donziger had sought stays in the Second
13 Circuit.

14 A. Yes.

15 Q. Do you have examples of that?

16 A. Mr. Donziger sought stays from the Second Circuit in the
17 1782 litigation, as well as in the -- what was known as the
18 Count IX litigation in which he attempted to intervene as a
19 defendant.

20 (Continued on next page)

21

22

23

24

25

L5DAADON3

Thomson - Direct

1 BY MS. GLAVIN:

2 Q. I am going to show you 10MC-02. This is Government Exhibit
3 3, certified copy of the docket sheet.

4 Move for admission.

5 (Government's Exhibit 3 received in evidence)

6 MR. KUBY: I'm sorry. I don't object to the document
7 being introduced outside of the grounds that this Court has
8 already ruled upon. I think this is irrelevant. I think the
9 Court has found it to be relevant and -- fine. Go ahead. It's
10 a bench trial, as you said.

11 BY MS. GLAVIN:

12 Q. Mr. Thomson, do you recognize this docket sheet?

13 A. Yes.

14 Q. What case is this docket sheet from?

15 A. This is from the 1782 litigation.

16 Q. What particular 1782 litigation was this?

17 A. This was the 1782 litigation directed to Mr. Donziger.

18 Q. If you could just explain when you say "1782 litigation"
19 what you mean?

20 A. Twenty U.S.C. Section 1782 revised a procedure for
21 litigants to take discovery in U.S. District courts for use in
22 foreign judicial proceedings.

23 Q. And in connection with this 1782 proceeding what was
24 Chevron seeking from Mr. Donziger?

25 A. Chevron sought issuance of document requests, subpoenas or

L5DAADON3

Thomson - Direct

1 documents and a subpoena for a deposition.

2 Q. I am going to show you what is Government Exhibit number
3 400. And have you had an opportunity to review this document
4 before today?

5 A. Yes.

6 Q. What is this?

7 A. This is Judge Kaplan's order denying Mr. Donziger's motion
8 to quash the subpoenas that Chevron and the individual
9 petitioners served them in.

10 Q. And did Judge Kaplan make any finding with respect to
11 privilege waiver?

12 A. Yes.

13 Q. What was Judge Kaplan's finding?

14 A. Judge Kaplan found that Mr. Donziger's failure to supply a
15 privilege log within the timing specified within the local
16 rules effected the waiver of his privileges that might
17 otherwise have applied.

18 MS. GLAVIN: Move for admission of Government Exhibit
19 400.

20 MR. KUBY: Sure.

21 THE COURT: Received.

22 (Government's Exhibit 400 received in evidence)

23 MR. KUBY: If we could go to ECF page seven.

24 Q. Mr. Thomson, if you could read what Judge Kaplan wrote on
25 page seven under "forth" just the first sentence?

L5DAADON3

Thomson - Direct

1 A. Donziger's privilege claims have been waived are premature
2 or both. Insofar as he claims privilege with respect to the
3 requested documents, the failure to file a privilege log is
4 required by Local Civil rule 26.2 and Federal Rule 26B5 waive
5 the objections.

6 Q. Now, did Mr. Donziger pursue an appeal from Judge Kaplan's
7 decision here on October 20, 2010?

8 A. Yes, he did.

9 Q. I am going to show you what is Government Exhibit Four and
10 Government Exhibit Five. Government Exhibit Four is the Second
11 Circuit document for 10-4341 and Government Exhibit Five is the
12 docket sheet for Second Circuit appeal 10-4405.

13 How are these two docket sheets related, if at all?

14 A. These are the docket sheets related to appeals from the
15 Judge Kaplan's waiver order following Mr. Donziger and the Lago
16 Agrio plaintiffs.

17 Q. So, did the Lago Agrio plaintiffs appeal Judge Kaplan's
18 order denying the motion to quash?

19 A. Yes.

20 Q. As well as Mr. Donziger?

21 A. Yes.

22 Q. I show you what is Government Exhibit Number 300.

23 MS. GLAVIN: Your Honor, move in Government Exhibits
24 Four and Five.

25 MR. KUBY: No objection, judge.

L5DAADON3

Thomson - Direct

1 THE COURT: Received.

2 (Government's Exhibits Four and Five received in
3 evidence)

4 Q. I show you what is Government Exhibit 300. Have you had an
5 opportunity to review this document before today?

6 A. Yes.

7 Q. And what is Government Exhibit 300?

8 A. This is an emergency stay pending appeal that was filed by
9 the Lago Agrio plaintiffs and Mr. Donziger.

10 Q. Okay.

11 A. Moving to stay Judge Kaplan's order.

12 Q. Is that the order which is Government Exhibit number 400
13 you just testified about?

14 A. Yes.

15 Q. And with respect to Mr. Donziger, was he represented by
16 counsel for purposes of this appeal?

17 A. Yes, he was.

18 MS. GLAVIN: Your Honor, move for admission of
19 Government Exhibit number 300 which is on the docket sheet from
20 Government Exhibit Number Four.

21 MR. KUBY: Sure.

22 THE COURT: Received.

23 (Government's Exhibit 300 received in evidence)

24 Q. Could we go to ECF page three.

25 And Mr. Thomson, if you could just read the first

L5DAADON3

Thomson - Direct

1 paragraph?

2 A. Appellants, the plaintiffs in related civil action against
3 Chevron and Lago Agrio Ecuador, the Lago Agrio plaintiffs, and
4 Steven Donziger submit this memorandum in support of their
5 Federal Rule of Appellate Procedure 882 motion for Romanette
6 one, a stay of the order of Honorable Lewis A. Kaplan dated
7 October 20, 2010, the order pending this Court's determination
8 of the appeal and Romanette two, a temporary stay of the order
9 pending a hearing on the instant motion.

10 Q. If I could turn your attention to ECF page 16 of Government
11 Exhibit 300, and if you could read out loud what Mr. Donziger
12 and the Lago Agrio plaintiffs stated in this paragraph which is
13 highlighted.

14 A. The paragraph is captioned "The subpoenas are Absurdly
15 Broad". As set forth in Section F of the facts supra, the
16 subpoenas are also absurdly broad and have almost nothing to do
17 with the allegations in the petitions. It is inequitable and
18 highly burdensome to require Mr. Donziger to produce a
19 privilege log for 20 years of litigation without substantially
20 narrowing the subpoena which is clearly designed to harass and
21 burden adversarial counsel.

22 Citing Murphy v. Gorman.

23 Q. Turn to ECF page 18 of the motion filed by Mr. Donziger and
24 the Lago Agrio plaintiffs.

25 If you could read the highlighted portion beginning

L5DAADON3

Thomson - Direct

1 with "irreparable injury absent a stay".

2 A. Absent a stay, Donziger and the Lago Agrio plaintiffs will
3 suffer irreparable injury because they stand to lose their
4 right to appeal, as the production and intended dissemination
5 of subpoenaed materials will likely deprive this Court of the
6 ability to provide the Lago Agrio plaintiffs with any effective
7 relief rendering moot any appeals from the order.

8 Q. And going to show you what is Government Exhibit number
9 301. Do you recognize this?

10 A. Yes.

11 Q. What is this?

12 A. This is the Second Circuit's order granting Mr. Donziger
13 and the Lago Agrio plaintiffs request for a temporary stay and
14 setting down a briefing schedule.

15 Q. And the date of this order is?

16 A. Says October 27, 2010.

17 Q. Turning to Government Exhibit 302.

18 MS. GLAVIN: Move for admission of Government Exhibit
19 301.

20 MR. KUBY: No objection.

21 THE COURT: Received.

22 (Government's Exhibit 302 received in evidence)

23 Q. Turning to Government Exhibit 302, do you recognize this?

24 A. Yes.

25 Q. What is this?

L5DAADON3

Thomson - Direct

1 A. This is the order from the Second Circuit denying the
2 motion for a stay and also setting down an expedited briefing
3 schedule and calendaring the case for oral argument on an
4 expedited basis.

5 MS. GLAVIN: More for admission of 302.

6 MR. KUBY: No objection.

7 THE COURT: Received.

8 (Government's Exhibit 302 received in evidence)

9 Q. Mr. Thomson, do you see where the Second Circuit states it
10 is further ordered that appellant's motion to expedite the
11 appeal is granted?

12 A. Yes.

13 Q. Had the appellants filed a motion to expedite this appeal?

14 A. Yes.

15 Q. Now, while that appeal from Judge Kaplan's October 20, 2010
16 decision was pending, did Judge Kaplan again address the
17 privilege waiver that was discussed in the October 2010 order?

18 A. Yes.

19 Q. Showing you what is Government Exhibit number 401 just to
20 orient you, Mr. Thomson.

21 THE COURT: For some reason we can't hear you.

22 MS. GLAVIN: Can you hear me now?

23 THE COURT: Yes. Thank you.

24 Q. Showing you what is Government Exhibit 401 just to orient
25 you, Mr. Thomson.

L5DAADON3

Thomson - Direct

1 THE WITNESS: Thank you, your Honor.

2 Q. If you could just look at, have you looked at ECF page 20.
3 Do you recognize what that opinion by Judge Kaplan is?

4 A. Yes. This is Judge Kaplan's furthered order on the waiver
5 issue in particular responding to a motion to reconsider the
6 waiver finding.

7 Q. And who filed the motion to reconsider the waiver finding?

8 A. Mr. Donziger in the last.

9 MS. GLAVIN: Move for admission of 401.

10 MR. KUBY: No objection.

11 THE COURT: Received.

12 (Government's Exhibit 401 received in evidence)

13 Q. Turning your attention to ECF page 20. And if you could
14 read out loud, Mr. Thomson, starting with "in any a case" and
15 read to the bottom of the page.

16 A. In any case having accepted Donziger's invitation to
17 reconsider the waiver issue, the Court considers itself free to
18 take into account all relevant factors. The first of these
19 factors is the clarity of Rule 26.2C in Donziger's failure seek
20 relief from the Court. These cut in favor of waiver "it should
21 be clear to all attorneys the Federal Rules of Civil Procedure
22 and the local civil rules are not starting points for
23 discussion concerning the handling of privilege documents, nor
24 are they merely suggested practice guidelines that attorneys
25 are free to disregard. They are rules. And in the absence of

L5DAADON3

Thomson - Direct

1 the court order or stipulation providing otherwise, they must
2 be obeyed". This view is supported by our circuit's holdings
3 that an attorney's failure to adhere to a clear rule of court
4 or a procedure rarely will be regarded that excusable neglect
5 or purposes granting relief under the Federal Rule 60B.

6 Second, Donziger's failure, even if the failure to
7 submit the log with the motion to quash or to seek an extension
8 of time initially was no more than inattention to the rule
9 quickly became something else.

10 Shall I continue?

11 Q. Continue.

12 A. The failure to provide the requisite privilege log was
13 called to Donziger's attention on September 1, 2010 when the
14 individual petitioners filed a brief in opposition to the
15 motion to quash and argued that the failure to produce a
16 privilege log or demonstrate that it would have been unduly
17 burdensome to have done so warranted rejection of the privilege
18 claims. Even then however no privilege log was forthcoming and
19 no request for an extension was made.

20 In view of these considerations alone, this Court
21 holds that any claims of privilege with respect to the
22 documents sought by the subpoena were waived.

23 Q. You can stop right there.

24 Go to ECF page 26 and if you could read aloud what
25 Judge Kaplan wrote.

L5DAADON3

Thomson - Direct

1 A. To be sure, the Court accepts that preparation of the
2 privilege log took a good deal of effort. It does not doubt
3 that Donziger understandably wished to avoid doing it if you
4 could defeat the subpoenas without it but the proper course
5 would have been to apply to the Court for relief under Rule
6 26.2. That would have given Chevron and the individual
7 petitioners an opportunity to resist. Instead, Donziger and
8 the Lago Agrio plaintiffs took their chances that the Court
9 would not hold that their failure to provide that the privilege
10 log waived any privileges. In all the circumstances that is a
11 bet that they should lose, regardless of whether there is any
12 per se rule of waiver.

13 Q. You could stop right there.

14 Mr. Thomson, did Mr. Donziger through his attorney at
15 that time file a motion in the Second Circuit in connection
16 with this November 29, 2010 decision by Judge Kaplan?

17 A. Yes, they filed a motion to stay.

18 Q. Showing you what is Government Exhibit 303, do you
19 recognize it?

20 A. Yes.

21 Q. What is it?

22 A. This is the emergency motion to stay pending appeal.

23 Q. And who were the moving parties to this motion?

24 A. It's the Lago Agrio plaintiffs here identified as the
25 Ecuadorian plaintiffs and Steven Donziger.

L5DAADON3

Thomson - Direct

1 MS. GLAVIN: And move for admission of Government
2 Exhibit 303.

3 MR. KUBY: Sure.

4 THE COURT: Received.

5 (Government's Exhibit 303 received in evidence)

6 Q. Go to ECF page two.

7 If you could read out loud, Mr. Thomson, the statement
8 that is highlighted under preliminary statement or statement
9 made by the Lago Agrio plaintiffs and Mr. Donziger?

10 A. This urgent motion arises from a startling ruling last
11 evening compelling immediate production by an attorney of
12 thousands of privileged documents on a two thousand page
13 privilege log, essentially, his entire privileged case file.
14 This baseless, unfair and highly prejudicial order should be
15 stayed immediately.

16 Q. Mr. Thomson, if I could turn you to Government Exhibit 304.
17 Do you recognize this document?

18 A. Yes.

19 Q. What is it?

20 A. This is the Second Circuit's order denying the emergency
21 motion for a stay, November 29, 2010.

22 MS. GLAVIN: Move for admission of 304?

23 MR. KUBY: Yep. No objection.

24 THE COURT: Received.

25 (Government's Exhibit 304 received in evidence)

L5DAADON3

Thomson - Direct

1 Q. And going to Government Exhibit Number 305, take a look at
2 this, Mr. Thomson. Have you had an opportunity to review this
3 before your testimony today?

4 A. Yes, I have.

5 Q. Go to page two. And if could you look at page three and
6 look at ECF page four.

7 What did the Second Circuit rule with respect to the
8 consolidated appeal of the LAPs and Mr. Donziger from the
9 denial of the motion to quash?

10 A. The Second Circuit affirmed Judge Kaplan's denial of the
11 motion to quash and the waiver findings and complemented the
12 quote, April district judge in the way he's discharged his
13 duties.

14 Q. Mr. Thomson, you mentioned another incident in which
15 Mr. Donziger sought a stay. You referred to Count Nine?

16 A. Yes.

17 Q. I want to turn your attention to --

18 MS. GLAVIN: Move for admission of 305, your Honor?

19 MR. KUBY: No objection.

20 THE COURT: Received.

21 (Government's Exhibit 305 received in evidence)

22 Q. Mr. Thomson, I want to focus now my questions with respect
23 to Count Nine litigation. Showing you what is Government
24 Exhibit 1000-327.

25 MS. GLAVIN: If we could go to the ECF page two so

L5DAADON3

Thomson - Direct

1 that Mr. Thomson can orient himself and if we could go to the
2 last page so Mr. Thomson can orient himself to the document.

3 Q. Do you recognize this exhibit?

4 A. Yes.

5 Q. What is it?

6 A. This is Judge Kaplan's decision on Mr. Donziger's motion to
7 intervene in the Count Nine litigation.

8 Q. And this is a civil case 11 CV 691?

9 A. Yes.

10 MS. GLAVIN: Move for admission, your Honor. This is
11 on the docket sheet as well.

12 MS. TRIVEDI: No objection, judge.

13 THE COURT: Received.

14 (Government's Exhibit 1000-327 received in evidence)

15 Q. Mr. Thomson, can you explain what Mr. Donziger was seeking
16 to intervene on and what Judge Kaplan ruled?

17 A. Mr. Donziger was seeking to intervene as a defendant in the
18 Count Nine case which had been severed from the remainder of
19 the original case. Judge Kaplan --

20 Q. When you say "original case" let me stop you right there.
21 What do you mean?

22 A. The case that Chevron initiated on February 1, 2011.

23 Q. Is this the RICO case?

24 A. That's the RICO case, yes.

25 Q. And what was Count Nine?

L5DAADON3

Thomson - Direct

1 A. Count Nine was a claim for declaratory relief regarding the
2 un-enforceability of the Lago Agrio judgment.

3 Q. And what happened with respect to Count Nine?

4 A. It was severed from the rest of the litigation and was
5 going to proceed to trial while the remainder of the case was
6 stayed.

7 Q. Was Mr. Donziger a defendant in Count Nine?

8 A. No, he was not.

9 Q. What, if any, relief did Mr. Donziger seek with respect to
10 Count Nine when Judge Kaplan severed it from the rest of the
11 RICO case?

12 A. He sought to intervene as a defendant in the case.

13 Q. And what did Judge Kaplan rule?

14 A. Judge Kaplan granted the motion to intervene to a limited
15 extent on a limited basis. In particular Mr. Donziger was able
16 to lodge objections and participate in depositions.

17 Q. Did Mr. Donziger notice or pursue an appeal from Judge
18 Kaplan's order which is Government Exhibit 1000-327?

19 A. Yes, he did.

20 Q. Showing you what is Government Exhibit 302 or -- excuse
21 me -- 306. Do you recognize that?

22 A. Yes.

23 Q. What is it?

24 A. This is Mr. Donziger's notice of appeal from Judge Kaplan's
25 order on his motion to intervene.

L5DAADON3

Thomson - Direct

1 Q. Now, when Judge Kaplan issued his decision on
2 Mr. Donziger's motion to intervene did Mr. Donziger --
3 withdrawn. Let me show you what is Government Exhibit 501.

4 Move for admission of Exhibit 306?

5 MR. KUBY: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 306 received in evidence)

8 Q. Showing you what is Government Exhibit 501. Do you
9 recognize this?

10 A. Yes.

11 Q. Okay. What is this?

12 A. This is Mr. Donziger's application in the district court to
13 stay all proceedings pending his appeal on the Court's order
14 regarding his application to intervene as a defendant in the
15 Count Nine action.

16 Q. And could we go to page two, ECF page two and move for
17 admission of Government Exhibit 501?

18 MR. KUBY: Fine, judge.

19 THE COURT: Received.

20 (Government's Exhibit 501 received in evidence)

21 Q. And if you could read out loud what Mr. Donziger stated
22 through his attorney in the highlighted portion on ECF page
23 two?

24 A. A stay is necessary because Donziger will be irreparable
25 harm if discovery motion practice and other pretrial

L5DAADON3

Thomson - Direct

1 preparations occur in this action without the full and vigorous
2 participation of Donziger and his counsel. Absent a stay,
3 Donziger will be deprived of any meaningful opportunity to
4 defend his interests in this action. Moreover, the public
5 interest will be disserved by automatic waste and duplication
6 that will occur if the intervention appeal succeeds and all
7 discovery and motion practice has to be reopened.

8 Q. Turning your attention to Government Exhibit number 502,
9 and if you could go to ECF page six the last page so that
10 Mr. Thomson can orient himself with the exhibit.

11 Do you recognize Government Exhibit 502?

12 A. Yes.

13 Q. What is this?

14 A. This is Mr. Donziger's motion before the district court to
15 stay the action pending the appeal order on the intervention.

16 Q. Is this a court order or Mr. Donziger's motion?

17 A. That's the court order.

18 Q. And move for admission of Exhibit 502?

19 MR. KUBY: No problem.

20 THE COURT: Received.

21 (Government's Exhibit 502 received in evidence)

22 Q. What was Judge Kaplan's ruling on Mr. Donziger's motion
23 with the statement appeal?

24 A. The motion was denied.

25 Q. Showing you what is Government Exhibit and the date of the

L5DAADON3

Thomson - Direct

1 denial is what date?

2 A. June 14, 2011.

3 Q. If we could go to Government Exhibit number 307. Do you
4 recognize this exhibit?

5 A. Yes.

6 Q. Okay. What is this?

7 A. This is Mr. Donziger's motion in the Second Circuit to stay
8 all district court proceedings pending appeal related to his
9 intervention motion and the denial by Judge Kaplan, the limited
10 grant, I should say.

11 MS. GLAVIN: Move for admission of Government Exhibit
12 307.

13 MR. KUBY: Yes, judge. No objection.

14 THE COURT: Received.

15 (Government's Exhibit 307 received in evidence)

16 Q. And with respect to Government Exhibit 307, it refers to
17 Second Circuit docket number 11-2260. Do you see that?

18 A. Yes, I see the docket number.

19 Q. I am going to show you what's Government Exhibit Number
20 Six.

21 MS. GLAVIN: Your Honor, for the record, this is
22 certified copy of the docket sheet or Second Circuit case
23 number 11-2260 move for admission.

24 MR. KUBY: Sure.

25 THE COURT: Received.

L5DAADON3

Thomson - Direct

1 (Government's Exhibit 11-2260 received in evidence)

2 Q. Now, if we could go back to Government Exhibit 307, if we
3 could look up the top left. Do you see that the motion form
4 states to set forth below precise complete statement of relief
5 sought; do you see that, Mr. Thomson?

6 A. Yes.

7 Q. And what did Mr. Donziger through his attorney say the
8 relief was that he was seeking?

9 A. The appellate seeks a stay of all district court proceeding
10 appellants seek a stay of all district court proceedings
11 pending resolution of this appeal (or, alternatively, pending
12 resolution of this mandamus petition).

13 Q. And if we could go to where it states "moving party"?

14 A. Mr. Donziger and his law offices.

15 Q. And if we turn your attention to ECF page five and if you
16 could read out loud the highlighted portion of Mr. Donziger's
17 brief?

18 A. Appellant Steven Donziger and he lists his law offices.
19 Hereby move the Court for an order staying all district court
20 proceedings in Southern District of New York case number 11 CV
21 3718 (UA), until this court decides the merits of this matter
22 whether treated as an appeal or as a petition for writ of
23 mandamus.

24 As required by Federal Rule of appellate procedure
25 8A1-A Donziger moved first in the district court or stay

L5DAADON3

Thomson - Direct

1 requested here. The district court denied Donziger's motion.
2 Appellee Chevron Corporation opposes this motion.

3 Q. And what was the date that Mr. Donziger filed this motion
4 to the circuit for a stay?

5 A. It says June 29, 2011.

6 Q. I am going to show you what is Government Exhibit 308.
7 Look at the date at the top Mr. Thomson.

8 A. This is dated June 30, 2011.

9 Q. Okay. Do you recognize what that document is, Government
10 Exhibit 308?

11 A. Yes.

12 Q. What is this?

13 A. This is Mr. Donziger's opening brief on appeal regarding
14 the motion. I'm sorry. The order on his motion to intervene.

15 MS. GLAVIN: Move for admission of Government Exhibit
16 308, your Honor?

17 MR. KUBY: Judge, I really with all due respect to
18 Ms. Glavin think that she is more than gilding this petroleum
19 slick lily here. We have gone through this and through this
20 and through this. Surely, I mean Judge Preska, not Shirley, I
21 mean certainly there is some Rule 404, 403 about redundancy and
22 we're redundantly redundant at this point as to what
23 Mr. Donziger did through counsel back in 2010. Please, pull
24 the plug.

25 THE COURT: How are we doing, Ms. Glavin?

L5DAADON3

Thomson - Direct

1 MS. GLAVIN: We're just about done.

2 THE COURT: Cool. Thank you.

3 MR. KUBY: I should have objected earlier.

4 MS. GLAVIN: You wouldn't have gotten the same answer
5 from me.

6 MR. KUBY: I might have gotten -- never mind. Moving
7 on.

8 MS. GLAVIN: All right. Move for admission of
9 Government Exhibit 308.

10 MR. KUBY: Sure, subject to my --

11 THE COURT: Received.

12 (Government's Exhibit 308 received in evidence)

13 MS. GLAVIN: If we could go to ECF page 52 and if you
14 could go to the bottom of that page. Could you read the
15 highlighted portion on ECF page 52.

16 A. Alternatively, this matter satisfies the conditions for
17 issuing a writ of mandamus. Chevron's motion to dismiss this
18 appeal for lack of appellate jurisdiction is pending. If the
19 Court grants the motion Donziger asks that the Court treat this
20 brief either as a petition for writ of mandamus or as a
21 petition for leave to file a writ of mandamus.

22 Q. If you could continue to the next page and read out loud
23 the highlighted portion.

24 A. Mandamus relief is appropriate where inter alia a district
25 court's denial of intervention is "based on an erroneous legal

L5DAADON3

Thomson - Direct

1 principle", citing San Jose Mercury News.

2 Three conditions must be satisfied before the writ may
3 issue, "First the party seeking relief must have "no other
4 adequate means to attain the relief he desires. "

5 Second, the petitioner must show that his right to the
6 writ is "clear and undisputable".

7 And third, the issuing Court must be satisfied that
8 the writ is appropriate under the circumstances. Citing the
9 Stein case.

10 All three conditions are met here.

11 Q. Mr. Thomson, did the Second Circuit rule on Mr. Donziger's
12 motion to stay in their petition?

13 A. Yes.

14 Q. Showing you what is Government Exhibit 309. Go to the next
15 page to orient Mr. Thomson.

16 Do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. This is the Second Circuit's order on Mr. Donziger's appeal
20 of Judge Kaplan's order on his motion to intervene in the
21 District Court Count Nine proceedings.

22 MS. GLAVIN: I move for admission.

23 MR. KUBY: Sure.

24 THE COURT: Received.

25 (Government's Exhibit 309 received in evidence)

L5DAADON3

Thomson - Direct

1 Q. What did the Court of Appeals rule?

2 A. The Court grants appellee Chevron's motion to dismiss the
3 appeal for lack of jurisdiction. It also further orders that
4 Mr. Donziger's request for mandamus relief is denied. It
5 therefore orders the motion to stay as moot as.

6 Q. Following this denial or this decision by the Second
7 Circuit, did Mr. Donziger seek any further relief from the
8 Second Circuit on this issue?

9 A. I believe he filed a motion for reconsideration.

10 Q. If you could go to Government Exhibit Number Six which is
11 the docket sheet appeal 11-2260 and if you could look at Docket
12 Entry 97.

13 What does Docket Entry 97 reflect?

14 A. A motion filed by Mr. Donziger to reconsider.

15 Q. Now, Mr. Thomson, I want to move on to another topic. I
16 want to focus your attention now on 2014. I show you what is
17 Government Exhibit 1901 and if we could go to ECF page 32.

18 Do you recognize this document, Mr. Thomson?

19 A. Yes.

20 Q. And what is Judge Kaplan directing here?

21 A. This Judge Kaplan's order granting in part the motion named
22 by Mr. Donziger to stay the judgment. The part that is granted
23 is that rather than being required to transfer Mr. Donziger's
24 shares you can always call it Amazonia to Chevron that instead
25 Mr. Donziger was required to transfer those shares to the clerk

L5DAADON3

Thomson - Direct

1 of the Court.

2 Q. Now, subsequent to this order by Judge Kaplan on April 25,
3 2014, were you on e-mail correspondence with Mr. Donziger
4 relating to that order?

5 A. Yes.

6 Q. Show you what is Government Exhibit 100. If you just go to
7 page two of this exhibit to orient Mr. Thomson. Do you
8 recognize this exhibit, Mr. Thomson?

9 A. Yes.

10 Q. Okay. What is it?

11 A. This is an email transmitting correspondence from Randy
12 Mastro to Mr. Donziger and his lawyers.

13 Q. And what's the date of the email to Mr. Donziger?

14 A. This is August 7, 2014.

15 Q. And you are CC'd on this, sir?

16 A. I am.

17 Q. And do you see in the "to" line it is to Zoe@littlepage
18 booth.com --

19 A. Yes.

20 Q. Who is Zoe and who is R. Friedman?

21 A. The first Zoe Little Page and Rick Friedman, two of
22 Mr. Donziger's lawyers in the RICO trial.

23 MS. GLAVIN: Okay. If we could go to the attached
24 correspondence that was emailed. Your Honor, I would have the
25 witness read out loud the letter in its full but I don't want

L5DAADON3

Thomson - Direct

1 to delay things but I think this is worth reading into the
2 record.

3 MR. KUBY: Well, that's delightful, judge. And I have
4 a lot of things I would like to read into the record as well
5 that I think are worthwhile but this relates to the subject
6 matter of this letter relates to the transfer of Amazonia
7 shares, something that Mr. Donziger for whatever reason is not
8 charged with in this case. We've spent an entire day with Anne
9 Champion with respect to Amazonia shares issue. Now, I'm sure
10 there is some point here and I'm sure it's a point that I
11 believe I'm missing but surely, what ever it is, it has been
12 made already.

13 THE COURT: Ms. Glavin.

14 MS. GLAVIN: Your Honor, Mr. Donziger entered, filed
15 with Judge Kaplan a letter in 2018 after Chevron had moved to
16 hold him in contempt on two grounds. One, failure to transfer
17 the Amazonia shares. Two, violation of paragraph five of the
18 RICO judgment with respect to Elliot management.

19 Mr. Donziger pointed to Chevron and said I've tried to
20 come up with a common sense solution and they didn't tell you
21 that I offered to do this. This goes to Chevron putting
22 Mr. Donziger on notice in August of 2014 that he needed to
23 comply with the April 25, 2014 order by Judge Kaplan directing
24 him to surrender to the Clerk of the Court, a stock power in
25 favor of the Clerk of the Court. Mr. Donziger did not do that.

L5DAADON3

Thomson - Direct

1 This goes to his state you mind, him being put on notice.

2 And with respect to Amazonia, Mr. Kuby has raised this
3 over and over. Defense has been on notice for over a year.
4 No, not over a year, about a year, that this would be put in as
5 404(b) evidence or as evidence inextricably intertwined to tell
6 the story of Mr. Donziger's contempt with respect to Counts
7 Four and Five which is his failure to assign his contingent
8 interest from 2011 and from 2017 because those three acts or I
9 should say the three interests he had, Amazonia, 2011
10 contingent fee and the 27 contingent fee are all related. We
11 think it goes directly to Mr. Donziger's state of mind.

12 And what essentially we will argue to the Court in
13 summation is that Mr. Donziger throughout 2018 played a shell
14 game. My interest is here. No, this isn't my interest.
15 Amazonia doesn't existed. Well, it did back in 2014 and in
16 Donziger didn't want to surrender shares and then it didn't
17 exist and so now it's a contingent fee. But the contingent fee
18 doesn't mean anything -- 2017 contingent. Now I'm not going to
19 sign over the 2017 contingent fee because I signed over the
20 2011 contingent fee.

21 THE COURT: Slowly.

22 MR. KUBY: I thought that was a perfect delivery for
23 the argument that they are making and I very much appreciated
24 that inextricable intertwinement. We went on for two hours
25 about Amazonia on Monday in this case. I objected. The Court

L5DAADON3

Thomson - Direct

1 overruled it. We went through it. We spent the whole day on
2 it. During cross-examination we dealt with the issue of what
3 happened with Amazonia. We dealt with compliance and
4 noncompliance.

5 We also addressed Counts Four and Counts Five as
6 things that kind of grew out of Amazonia but ultimately became
7 charges in this case unlike Amazonia. You know, I understand
8 that the notion that to some extent you need to tell a back
9 story in a narrative to bring out the full story. But now
10 Amazonia is a giant tail at this point wagging a very small
11 dog. We have Counts Five and Four. We are addressing those.
12 They're being litigated. More Amazonia? Really? Thursday
13 afternoon at five minutes after we've been through this for a
14 day and a half.

15 I mean look, I don't know why Judge Kaplan didn't
16 charge Mr. Donziger with contempt of court on Amazonia. He
17 seemed to be prolific enough. Maybe he thought six counts was
18 enough. Bastante, which means enough in my very bad Spanish.

19 THE COURT: All right. Overruled.

20 BY MS. GLAVIN:

21 Q. Mr. Thomson, if you could read the letter that Gibson Dunn
22 e-mailed to Mr. Donziger and his attorneys on August 7 of 2014
23 into the record.

24 A. Counsel, I write on behalf of Chevron Corporation to
25 request long overdue compliance with the Court's final judgment

L5DAADON3

Thomson - Direct

1 against Steven Donziger and his law firms (together Donziger)
2 in the above captioned matter.

3 As you are aware, on March 4, 2014, the Court issued a
4 final judgment ordering Donziger, among other things, to
5 "execute in favor of Chevron a stock power transferring all of
6 his right, title and interest in his shares of Amazonia
7 recovery limited. During the pendency of Donziger's motion to
8 stay enforcement of the Court's judgment Chevron did not
9 request that Donziger proceed with the transfer despite the
10 Court recognizing "there is no just reason for delay".

11 On April 25, 2014 the Court ruled on Donziger's motion
12 to stay the enforcement of the judgment and found his
13 "arguments lacked merit" and "an immediate transfer of
14 Donziger's Amazonia shares to Chevron would threaten Donziger
15 with no irreparable injury." Nevertheless, the Court found that
16 "the overriding concern of prevent Donziger from benefiting
17 from the fraud he committed may be achieved during the pendency
18 of appeal by taking the shares out of Donziger's hands without
19 placing them into Chevron's.

20 The Court therefore, amended its judgment to order
21 Donziger to "execute in favor of the Clerk of this Court a
22 stock power transferring to the clerk all of his right, title
23 and interest in his shares of Amazonia. The Court denied
24 Donziger's request to stay enforcement of the judgment against
25 him in all other respects.

L5DAADON3

Thomson - Direct

1 There is no reason for further delay. We request that
2 Donziger promptly comply with the Court's judgment as amended
3 and transfer his interest in Amazonia to the Clerk of the
4 Court. Indeed, it is now August 7, or more than five months
5 after the Court issued its judgment and three months after the
6 judgment was amended and Donziger already should have done so.
7 Donziger, of course should have also already complied with the
8 other aspects of Court's judgment including the transfer to
9 Chevron of any of Donziger's property that is traceable to the
10 Ecuadorian judgment. Please tell us when Donziger will comply
11 with the judgment in full which should in no event be later
12 than August 21. This provides you with an additional two weeks
13 of time to perform the relatively simple acts contemplated by
14 the judgment. We are even willing to provide a form stock
15 power agreement for Donziger's use. If Donziger does not
16 comply in full by August 21, we will be forced to seek the
17 Court's assistance including by an application to hold Donziger
18 in contempt.

19 MS. GLAVIN: Your Honor, move into evidence Government
20 Exhibit 100.

21 MR. KUBY: Just objection based on redundancy, judge.

22 THE COURT: Overruled. Received.

23 (Government's Exhibit 100 received in evidence)

24 Q. Showing you Government Exhibit 101, Mr. Thomson.

25 Is this a further email exchange in connection with

L5DAADON3

Thomson - Direct

1 Government Exhibit 100 which is in evidence?

2 A. Yes.

3 Q. So starting at the bottom, is Mr. Donziger on this e-mail
4 correspondence?

5 A. Yes, he is.

6 Q. And are you on this as well?

7 A. Yes, I am.

8 MS. GLAVIN: Move for admission of Government Exhibit
9 101.

10 MR. KUBY: No objection.

11 THE COURT: Received.

12 (Government's Exhibit 101 received in evidence)

13 Q. Starting at the bottom, the email August 7, 2014 at 5:47
14 p.m. for Mr. Bell, is that the email that we just saw in
15 Government Exhibit 100?

16 A. Yes.

17 Q. Okay. Going to the next email on that chain, who responded
18 to who and what did they say?

19 A. Mr. Friedman responded looks like responded to all saying,
20 please, send the stock document you referenced in your letter.

21 Q. When Mr. Friedman referred to the stock document you
22 reference in your letter, what did you understand Mr. Friedman
23 to be referring to?

24 A. It looks like he's referring to the offer to send the form
25 of stock transfer.

L5DAADON3

Thomson - Direct

1 Q. And is Mr. Donziger CCed on this email?

2 A. Yes.

3 Q. Going up to the next email of this chain, this is an email
4 from Jefferson Bell to Richard Friedman with a CC to
5 Zoe@littlepagebooth, Steven R. Donziger. On August 8, 2014 at
6 3:38 p.m. and the email states, please, find attached a form
7 stock power agreement.

8 And was there an attachment?

9 A. Yes.

10 Q. We're going to page three of this exhibit and what is on
11 page three of the exhibit?

12 A. This is the formal stock form of stock power transmitted to
13 Mr. Friedman and the other CC.

14 Q. And this stock power which was emailed to Mr. Donziger and
15 his attorneys, what does it assign?

16 A. This assigns Mr. Donziger's interests in Amazonia Recovery
17 Limited.

18 Q. Okay. To who? Look at the third line.

19 A. To the Clerk of the US District Court for the Southern
20 District of New York.

21 Q. And at this time as of August 8 of 2024 Mr. Thomson was
22 Mr. Donziger's appeal of the RICO judgment pending?

23 A. I believe so, yes.

24 Q. Showing you what is Government Exhibit 102. If you look at
25 top of Government Exhibit 102 and the email addressees.

L5DAADON3

Thomson - Direct

1 Mr. Thomson, you're not on this email; is that correct?

2 A. That's correct.

3 Q. Do you recall whether or not you saw this email even though
4 you were not CCed on it at or around August 22 of 2014?

5 A. Yes. It was forwarded to me the same day.

6 Q. And who is this email from?

7 A. It's from Mr. Donziger.

8 MS. GLAVIN: Move for admission of Government Exhibit
9 102?

10 MR. KUBY: No objection, judge, except I will note
11 it's after one which is typically our lunch break. While it
12 was my certain hope we would conclude the proceedings today by
13 five o'clock, Ms. Glavin has chosen a litigation strategy that
14 I am fairly comfortable we'll preclude that. So, we should
15 take our lunch and be prepared I think subject to the Court to
16 give up our Friday or at least or Friday morning.

17 MS. GLAVIN: Your Honor, I actually can finish this.
18 Well, we can take the lunch.

19 THE COURT: Finish the document, please.

20 MS. GLAVIN: This is the last exhibit.

21 Mr. Thomson --

22 THE COURT: Did you move?

23 MS. GLAVIN: Move for admission.

24 MR. KUBY: Sure.

25 THE COURT: Received.

L5DAADON3

Thomson - Direct

1 (Government's Exhibit 102 received in evidence)

2 Q. Mr. Donziger says, please, see attached correspondence and
3 proposed stipulation.

4 Can we go to page two of Government Exhibit 102. And
5 what is on page two, I guess three or four?

6 A. This is Mr. Donziger's response to Mr. Mastro's letter.

7 Q. If we could go to page two and if we could highlight in the
8 second paragraph beginning with "the upshot", and if you could
9 read that sentence by Mr. Donziger starting with "the upshot"?

10 A. The upshot is that a simple transfer to the clerk's office
11 of my Amazonia shares would in practice mean the complete
12 divestiture and potentially irretrievable loss of more than two
13 decades of labor on the part of me and some of my colleagues
14 before the Second Circuit even has a chance to decide on appeal
15 from Judge Kaplan's judgment.

16 Q. And did Mr. Donziger provide a stipulation, a proposed
17 stipulation of this letter?

18 A. He did.

19 Q. And is that the stipulation regarding compliance which is
20 attached?

21 A. I believe so, yes.

22 Q. And in sum and substance can you tell us what
23 Mr. Donziger's proposed stipulation was?

24 A. That he would not convey or transfer his interests in the
25 Amazonia shares to the clerk of the court but that he would

L5DAADON3

Thomson - Cross

1 make certain promises not to do other things with those shares.

2 Q. Did Chevron agree to that stipulation?

3 A. No.

4 Q. Did Mr. Donziger seek any relief from Judge Kaplan's
5 directive that he execute a stock power in favor of the clerk
6 of the court for Amazonia shares?

7 A. No, he did not.

8 MS. GLAVIN: Your Honor, I have no further questions.

9 MR. KUBY: Judge, could I just take two minutes to get
10 the witness under cross before we break?

11 THE COURT: Certainly. Go right ahead.

12 MR. KUBY: Thank you so much.

13 THE COURT: I thought you were hungry.

14 MR. KUBY: I am. I am hungry for justice.

15 CROSS-EXAMINATION

16 BY MR. KUBY:

17 Q. Good afternoon, Mr. Thomson.

18 A. Good afternoon.

19 Q. This will not be brutal. I'd like to just ask you a couple
20 questions about your background.

21 A. Sure.

22 Q. You went to Princeton, correct?

23 A. I did.

24 Q. Then you went to UCLA Law; is that right?

25 A. That's correct.

L5DAADON3

Thomson - Cross

1 Q. And then if that were not enough you went to the University
2 of Chicago, is a correct, for a masters degree?

3 A. Your timing is a little off but yes, I did go to the
4 University of Chicago for a masters degree.

5 Q. Then you went to the University of Chicago for a PhD; is
6 that correct?

7 A. Yes.

8 Q. In political science?

9 A. Correct.

10 Q. You're fluent in Spanish?

11 A. French.

12 Q. Are you familiar with the English version of the quote
13 "there is hardly any political question in the United States
14 that sooner or later does not turn into a judicial question"?

15 A. I believe I've heard that, yes.

16 Q. And who wrote that?

17 A. I think that's a quote from Alexis de Tocqueville.

18 Q. You did a dissertation on Alexis de Tocqueville, correct?

19 A. Yes.

20 Q. You thought that quote was true then?

21 A. I believed that quote was accurate then.

22 Q. And today too, right?

23 A. Generally accurate today too.

24 MR. KUBY: Thank you.

25 Break for lunch and we will move on to the substance.

L5DAADON3

Thomson - Cross

1 Thank you.

2 THE COURT: All right. Five after two.

3 (Luncheon recess)

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

L5DVDON4

Thomson - cross

A F T E R N O O N S E S S I O N

2:10 P.M.

THE COURT: Mr. Kuby.

MR. KUBY: Thank you, Judge. May I proceed?

THE COURT: Yes, sir.

MR. KUBY: And once again, I just want to note for the Court that when I'm talking in this, like, booth, my voice booms out to me in an echo chamber. And sometimes when the Court speaks, I don't hear you. I see you doing speaking-like things; so if I don't stop immediately, it is that. And there's no way I'm insouciant, if you will, to the requirement that you talk and I stop.

THE COURT: Yes, sir.

MR. KUBY: Thank you.

WILLIAM THOMSON, resumed.

BY MR. KUBY:

Q. Good afternoon again, Mr. Thomson.

A. Good afternoon.

Q. I want to direct your attention, preliminarily at least, to the 1782 phase of the case. And that was roughly 2010 into 2011?

A. I believe that's correct, yes.

Q. And there were many, many references to what Mr. Donziger did during your direct testimony; correct?

A. There were some references to what he did, yes.

L5DVDON4

Thomson - cross

1 Q. Okay. Some references to what he did.

2 And many, many references to what he did not do?

3 A. There were some references to what he did not do.

4 Q. And you knew at that time that he was represented by
5 counsel; correct?

6 A. Yes, he had counsel who appeared on the record.

7 Q. And I think at one point Bruce Kaplan?

8 A. That sounds correct.

9 Q. No relation to Judge Kaplan.

10 A. Not as far as I know.

11 Q. But not a solo practitioner, right?

12 A. Correct.

13 Q. It was an actual, you know, law firm.

14 A. As I understand, yes.

15 Q. It wasn't the size of Gibson Dunn Crutcher, but it wasn't a
16 little boutique, right?

17 A. I couldn't speak to the size of the firm.

18 Q. And with respect to all of your testimony about all of the
19 filings that Mr. Donziger made during the 1782 process, you
20 don't have any specific knowledge whether Mr. Donziger as a
21 person read any of those, do you?

22 A. I have no personal knowledge of what Mr. Donziger
23 personally did; correct.

24 Q. He was proceeding through counsel during that period,
25 right?

L5DVDON4

Thomson - cross

1 A. He had counsel of record at that point, yes.

2 Q. And, of course, it's fair to say even if Mr. Donziger had
3 read those documents, you have no way of knowing whether he
4 actually understood what he was reading; correct?

5 A. I have no personal knowledge of what Mr. Donziger read or
6 what he personally understood.

7 Q. Right. But you know he went to Harvard Law School, right?

8 A. I've read that, yes.

9 Q. And I imagine in your time as an appellate litigator,
10 you've met other Harvard Law School grads, right?

11 A. Yes.

12 Q. And some of them had been good lawyers?

13 A. Yes.

14 Q. And some of them really had no idea what they were talking
15 about?

16 A. I'm not sure I could characterize any particular lawyers
17 like that, no.

18 Q. How would you characterize it in a better way?

19 A. Some Harvard Law graduates are probably better than others
20 as far as being lawyers are concerned, that's probably true.

21 Q. And there's no -- I mean, outside of the cache of a Harvard
22 Law degree, that does not imbue anybody with a specific set of
23 legal skills, does it?

24 A. I can't speak to what the Harvard Law degree specifically
25 conveys. I didn't personally go to Harvard Law School.

L5DVDON4

Thomson - cross

1 Q. No, you went to UCLA; correct?

2 A. Correct.

3 Q. And you consider yourself a better appellate lawyer than
4 most, fair to say?

5 A. I have a certain amount of experience in appellate law,
6 yes.

7 Q. And that certain amount is a greater amount than most
8 people you're up against most of the time, right?

9 A. It's hard to generalize, but certainly there are many very
10 accomplished appellate litigators who I've litigated against,
11 and there are some who are less experienced, that's true.

12 Q. Now, did you notice that by 2018, the quality of the legal
13 papers being filed by Mr. Donziger had decreased markedly from
14 the quality that was apparent in 2010 and 2011?

15 A. It sounds like you're asking me to give an opinion on
16 ongoing litigation, which I'm afraid is covered --

17 Q. No, I'm asking your opinion on a piece of litigation that
18 had gone on during a specific time frame. I'm not asking you
19 to characterize ongoing litigation, I'm just trying to get that
20 time frame. And as George Bush said, We all agree, the past is
21 over.

22 THE COURT: Is there a question?

23 Q. Yeah. Is it fair to say that from the time that
24 Mr. Donziger stopped being represented by counsel, 2010, 2011,
25 2012, maybe 2014, that was a counsel period.

L5DVDON4

Thomson - cross

1 By 2018, the quality of the papers that he had -- was
2 filing declined significantly?

3 A. I don't think I can comment on -- you're asking me to give
4 an opinion about an opponent's --

5 Q. Yeah.

6 A. -- briefs in an ongoing litigation.

7 Q. I mean, are you citing a privilege? Are you reluctant to
8 give your opinion? Is there an objection being made by
9 somebody? Are you making an objection?

10 A. It sounds like you're asking me to give work product.

11 Q. I'm sorry?

12 A. It sounds like you're asking me to give a work product, an
13 opinion about the state of what is an ongoing litigation.

14 Q. No, I'm not.

15 MR. KUBY: And again, Judge, could you direct him to
16 answer the question? There's no objection in place. I don't
17 see Mr. Brodsky there jumping up, as he would if there was a
18 privilege issue. Can I not have to litigate this with the
19 witness?

20 THE COURT: Mr. Thomson, are you able to answer the
21 question as it's phrased to you, sir?

22 THE WITNESS: I don't believe so, no.

23 Q. Why not?

24 A. It's not very specific. I'd need to know which briefs you
25 are talking about.

L5DVDON4

Thomson - cross

1 Q. As a general matter -- well, withdrawn.

2 Are you aware of Steven Donziger participating as an
3 attorney in any other case besides the *Lago Agrio* case?

4 A. Not specifically, no.

5 Q. Generally?

6 A. I have read that he worked as a public defender at one
7 point, but I don't know the content of that and whether that
8 involved representing clients in court with cases, but --

9 Q. So is it fair to say for the past quarter century the only
10 case which you are -- matter which you are familiar with him
11 handling is the *Lago Agrio* litigation and its many spin-offs?

12 A. That's generally true, yes.

13 Q. So at some point in the course of the -- and I'm going to
14 separate out in time periods, I'm going to talk about the
15 post-judgment period, and in this case it's after the RICO
16 judgment. And I'm going to talk about prejudgment matters
17 which are at any time before the RICO judgment.

18 Prior to the RICO judgment, at one point the firm
19 Emery, Celli, Brinckerhoff & Abady was involved in the case; is
20 that correct?

21 A. That's correct.

22 Q. And who were they representing?

23 A. They were representing the *Lago Agrio* plaintiffs.

24 Q. And when you filed your RICO action, you sued them; is that
25 correct?

L5DVDON4

Thomson - cross

1 A. We did not sue Emery Celli, no.

2 Q. Did you sue any defendants from Emery Celli?

3 A. I don't believe so.

4 Q. What happened to Emery Celli, if you know?

5 A. I'm sorry, I don't understand the question.

6 Q. Withdrawn.

7 At some point Patton Boggs was representing who in
8 this litigation, if you know?

9 A. They represented the *Lago Agrio* plaintiffs who appeared in
10 the Second Circuit.

11 Q. And you're familiar with that law firm?

12 A. Yes.

13 Q. And did you file an action against them?

14 A. I don't believe so, no.

15 Q. Chevron did not file an action against Patton Boggs?

16 A. I'd have to go back. I haven't looked at this for a long
17 time. I don't believe Chevron initiated a lawsuit against
18 Patton Boggs.

19 Q. Did you file subpoenas -- excuse me, serve subpoenas?

20 A. If you've got a document to show me, I'd be happy to look
21 at it, but this is quite a while ago, and I -- I don't know
22 whether we subpoenaed Patton Boggs.

23 Q. Do you have a specific recollection of Patton Boggs
24 withdrawing from this case because they had been virtually
25 driven into bankruptcy by Gibson Crutcher?

L5DVDON4

Thomson - cross

1 MS. GLAVIN: Objection.

2 THE COURT: Sustained.

3 Q. Are you aware that Patton Boggs withdrew from this action
4 based on the assertion that they had been driven -- virtually
5 driven into bankruptcy by Gibson Dunn Crutcher?

6 MS. GLAVIN: Objection.

7 THE COURT: Sustained.

8 Q. Who's John Keker?

9 A. John Keker is a lawyer in San Francisco.

10 Q. I'm sorry, is a lawyer?

11 A. In San Francisco, I believe.

12 Q. Yeah. Did he have any role in any of this litigation?

13 A. He was Mr. Donziger's counsel for a period.

14 Q. And he moved to withdraw; is that correct?

15 A. He did.

16 Q. And the reason he cited was that dealing with Gibson Dunn
17 Crutcher had run up about a million dollars worth of bills, and
18 he could simply no longer afford to do this.

19 MS. GLAVIN: Objection.

20 THE COURT: Sustained.

21 MR. KUBY: What's the basis of the objection -- or the
22 sustenance?

23 THE COURT: I'll let counsel go first.

24 MS. GLAVIN: Relevance. Hearsay.

25 MR. KUBY: Well, it's relevant to show that

L5DVDON4

Thomson - cross

1 Mr. Donziger's position in 2010, 2011, 2013, and 2014, as a
2 defendant who was well represented by many, many, many
3 attorneys, changed dramatically by 2018. And so all of the
4 things that Mr. Donziger did or didn't do during the two hours
5 we spent on Count IX and the 1782, in my view, were always
6 irrelevant. And they are even more -- and so the
7 cross-examination is designed to elicit -- these are all for
8 lawyers. And all those lawyers ended up being chased out of
9 this case by Gibson Dunn Crutcher and their blitzkrieg-style
10 scorched earth cortege.

11 THE COURT: Counsel, counsel --

12 MR. KUBY: But it doesn't make this any less true.

13 MS. GLAVIN: Move to strike.

14 THE COURT: But that's not what we are here to talk
15 about, are we? No press conferences.

16 MR. KUBY: I don't -- Judge, just because I make a
17 point that may have some resonance outside this courtroom, with
18 due respect, I'm not making it to that audience, I'm making it
19 to this Court.

20 THE COURT: I hear what you say, sir. Perhaps the
21 adjectives and the adverbs could be dispensed with.

22 MR. KUBY: I'm not quite sure I heard that, but --

23 THE COURT: The adjectives and the adverbs could be
24 dispensed with.

25 MR. KUBY: I thought "cortege" was pretty good. I

L5DVDON4

Thomson - cross

1 mean, come on.

2 THE COURT: All right. Let's go ahead.

3 BY MR. KUBY:

4 Q. By 2018, Mr. Donziger had represented that he was *pro se*;
5 is that correct?

6 A. I'm not sure of the exact date, but certainly he did file
7 briefs where he said that he was *pro se*, yes.

8 Q. In 2018.

9 A. I don't remember the exact date, but he's filed briefs --
10 if you want to show me one, I'm happy to look at it, but --

11 Q. You were dealing with Mr. Donziger directly in at least one
12 email exchange?

13 A. Me personally? Yes, I was on at least one email exchange
14 with Mr. Donziger.

15 Q. And you saw other Gibson Dunn Crutcher lawyers dealing with
16 Mr. Donziger directly as well, is that correct? On emails.

17 A. Certainly other Gibson Dunn lawyers did have direct
18 dealings with Mr. Donziger, yes.

19 THE COURT: Mr. Thomson, I'm just going to ask you to
20 try to speak into the microphone. I know you want to look at
21 counsel. It's going to help the reporter.

22 THE WITNESS: Okay.

23 Q. And without in any way intending to intrude upon your work
24 product in ongoing litigation, is it fair to say that you would
25 not have dealt with Mr. Donziger directly if he were

L5DVDON4

Thomson - cross

1 represented by counsel, unless you had specific leave from
2 counsel to do that?

3 A. That is generally true, yes.

4 Q. And in your review of the docket and from your
5 institutional knowledge of the case, is it fair to say that
6 2018 was a very active year for Chevron in the Donziger
7 litigation as a general matter?

8 A. As a general matter, yes, it was fairly active.

9 Q. You issued many subpoenas; correct?

10 A. Yes, there were a number of subpoenas issued.

11 Q. Okay. Well, "a number" can be one or it can be 100. Can
12 you give me some sense of where the actual number might be?

13 A. No, I don't know the number.

14 Q. More than one though?

15 A. It is more than one.

16 Q. More than ten?

17 A. I believe more than ten.

18 Q. More than 50?

19 A. I don't know the answer.

20 Q. More than 100?

21 A. I don't know the answer.

22 Q. So somewhere between ten and 100?

23 A. I don't know how many more than ten the subpoenas were
24 issued.

25 Q. And some of these were so-called third-party subpoenas as

L5DVDON4

Thomson - cross

1 well; is that correct?

2 A. They were subpoenas issued to third parties, yes.

3 Q. And there were numerous depositions taking place during
4 2018; is that correct?

5 A. There were some depositions taking place at that time, yes.

6 Q. How many?

7 A. I don't know the actual number.

8 Q. Well, every post-judgment funder of the Ecuador litigation
9 was deposed; is that correct?

10 A. I don't know whether that's true or not.

11 Q. You don't know if that's true.

12 You made some -- a couple of references in your
13 testimony about the 1782s to a privilege log; is that correct?

14 A. I read some portions of the orders that referenced a
15 privilege log, yes.

16 Q. Isn't it true that, in fact, Mr. Donziger's attorneys
17 submitted a 2,000-page-plus privilege log?

18 A. That's what Judge Kaplan's orders reflect, yes.

19 Q. Is that true?

20 A. I don't have personal knowledge of the size of the
21 privilege log.

22 Q. I'm sorry?

23 A. I'm sorry. I don't have personal knowledge of the size of
24 the privilege log.

25 Q. You were involved in litigation though?

L5DVDON4

Thomson - cross

1 A. I was involved in litigation, yes.

2 Q. Okay. So Mr. Donziger indeed did -- through counsel, did
3 submit a privilege log, right?

4 A. That's my understanding, yes.

5 Q. And whether it was 2,000 pages or 2,010 pages is what you
6 don't have personal knowledge of; correct?

7 A. I don't have personal knowledge of the size of the
8 privilege log, yes.

9 Q. And Judge Kaplan ruled it untimely; is that correct?

10 A. That's my understanding, yes.

11 Q. Originally -- well, withdrawn.

12 The privilege log referenced thousands and thousands
13 of documents, did it not?

14 A. I don't know how many documents it referenced.

15 Q. Did you care?

16 A. If you're asking me a work product question --

17 Q. No, I'm asking you a question question. Did you care how
18 many documents were in this belated, but submitted, privilege
19 log?

20 A. I don't have any recollection whether I cared or not.

21 Q. Because whatever you were doing, you were proceeding on
22 apace; correct?

23 THE COURT: A case or on apace.

24 MR. KUBY: I'm sorry, Judge, on apace.

25 THE COURT: With a P, like "Peter"?

L5DVDON4

Thomson - cross

1 MR. KUBY: Yeah.

2 THE COURT: Okay. I thought it was a C, like
3 "Charles."

4 MR. KUBY: Oh, yeah, yeah, I could see how you would
5 think that, because cases and all. No, no proceeding on apace.
6 A. I don't understand the question.

7 Q. Going along your appointed path in this litigation.

8 A. I'm sorry, I don't understand what you're asking me.

9 Q. The reason you don't recall caring or not caring about the
10 size of the privilege log was because it didn't affect war
11 strategy at all?

12 A. It sounds like you're asking me about our litigation
13 strategy. I'm sorry, I can't answer that.

14 Q. I'm asking you a question.

15 THE COURT: Please don't talk over the witness.

16 MR. KUBY: Judge, I'm sorry. We have three private
17 prosecutors sitting right here. We have Reed Brodsky, Gibson
18 Dunn Crutcher partner, who's been sitting -- and former --
19 quite accomplished -- Assistant United States Attorney before
20 he started doing this, sitting there in order to interpose
21 objections, if necessary, on privilege grounds. Do I really
22 have to indulge a lawyer witness acting like a lawyer instead
23 of a witness? Do you?

24 THE COURT: Counsel, I think he said he didn't
25 understand what you are asking. That's not a very lawyerly

L5DVDON4

Thomson - cross

1 response. It's kind of a witness-like response.

2 MR. KUBY: I'm sorry, could we have his answer read
3 back, because maybe I didn't hear it correctly, which is
4 entirely possible.

5 THE COURT: (Reading)
6 "A. It sounds like you're asking me about our litigation
7 strategy. I'm sorry, I can't answer that."

8 MR. KUBY: That is not him saying that he doesn't
9 understand the question, that is him -- Mr. Brodsky has his
10 hand up, Judge. Would you like to call on him?

11 THE COURT: Only if you insist.

12 MR. KUBY: I don't, but I'd hate to see him standing
13 there waving his hand.

14 THE COURT: Mr. Brodsky, step into the microphone.

15 MR. BRODSKY: Since Mr. Kuby invited me to point out
16 the objectionable basis of the question, Mr. Kuby was asking
17 for Mr. Thomson's strategy. And asking a lawyer about his
18 strategy is classic work product.

19 The definition of "work product" is one's attorney's
20 strategic decisions and choices. So the question is
21 objectionable based on work product.

22 MR. KUBY: My question, I believe, was: You were
23 going forward on your appointed course; correct? I'm not
24 asking about what was going on in his head. I really don't
25 care. I was asking what he was doing.

L5DVDON4

Thomson - cross

1 THE COURT: In the prior answer, you said, in
2 clarifying your prior question: (Reading)
3 "Q. Because whatever you are doing, you were proceeding on
4 apace."

5 And then I asked you "case" with a Charles or "pace"
6 with a Peter. You said no, proceeding on apace.

7 "A. I don't understand the question.

8 "Q. Going along your appointed path in this litigation.

9 "A. I'm sorry, I don't understand what you're asking me."

10 And then we went on about the privilege log and all.

11 MR. KUBY: All right, Judge.

12 BY MR. KUBY:

13 Q. You're a partner with Gibson, Dunn & Crutcher?

14 A. Yes, I am.

15 Q. Are you -- I just heard this term today, are you an equity
16 partner?

17 A. Yes.

18 Q. So if Gibson, Dunn & Crutcher does well, you do well? Can
19 you answer that without intruding into some mechanism?

20 A. I, along with other people, prosper when the firm prospers,
21 yes.

22 Q. I'm sorry, I didn't hear the last part of the answer.

23 A. I said along with other people, I prosper when the firm
24 prospers, yes.

25 Q. And when the firm does not prosper, you don't prosper as

L5DVDON4

Thomson - cross

1 much?

2 A. That would be true.

3 Q. But you prosper pretty well on an annual basis; is that
4 correct?

5 A. The firm has done well, yes.

6 Q. And in terms of client billing, to the best of your
7 knowledge, is Chevron one of the larger clients that you bill?

8 A. I don't know exactly where Chevron --

9 Q. I'm not asking exactly.

10 A. I don't know exactly where it is, but it's one of the
11 larger clients, yes.

12 Q. So when you say you don't know exactly, do you think it's
13 the largest client?

14 A. I don't think it's the largest client, no.

15 Q. Second largest?

16 A. As I say, I don't really know where in the scheme of things
17 it ranks as a client.

18 Q. Somewhere near the top though, right? On a one to ten,
19 it's in the top ten?

20 A. I couldn't put it one to ten or -- I can't -- I don't know
21 where numerically it falls. It's not a small client.

22 Q. It's a huge client, right?

23 A. It's a large client.

24 Q. Very large.

25 A. It's a large client.

L5DVDON4

Thomson - cross

1 Q. But not very large?

2 A. I'm not sure what you're -- how you're drawing those
3 distinctions, so --

4 Q. I don't know why you're resisting "very" and insisting on
5 "large," but there we are.

6 I'd like to show you --

7 MR. KUBY: Judge, I think the prosecution and the
8 defense have reached a stipulation. And the stipulation is
9 going to be that -- and Ms. Glavin will stop me if I'm wrong.

10 MS. GLAVIN: I was going to say, which stipulation is
11 this?

12 MR. KUBY: That we will agree that the breakdown of
13 time, hours, and associates, can be admitted into evidence as
14 to Ms. Champion, who's really already testified to it, and as
15 to Mr. Thomson, but not as to the other GDC partners.

16 MS. GLAVIN: I think we can resolve this with another
17 chart that lays just that out. So I'll be happy to --

18 MR. KUBY: Yeah.

19 MS. GLAVIN: That's fine.

20 MR. KUBY: I'm going to use this exhibit now.

21 MS. GLAVIN: Okay.

22 MR. KUBY: But it will be amended later on. And this
23 will be exhibit? I offer I-51 into evidence.

24 THE COURT: No objection, right?

25 MS. GLAVIN: With the limitation. With the

L5DVDON4

Thomson - cross

1 limitation. And we will replace I-51 at some point.

2 THE COURT: All right. Received with that caveat.

3 (Defendant's Exhibit I-51 received in evidence)

4 BY MR. KUBY:

5 Q. Mr. Thomson, have you ever seen that document before?

6 A. No.

7 Q. Take a minute or two and leaf through it. Focus where your
8 name appears.

9 (Pause)

10 Q. Have you had a chance to review it?

11 A. Yes, although since the pages flip back and forth, I wasn't
12 able to study it, but I've looked at what you've shown me.

13 Q. Okay. Well, if that becomes an issue, we can address it in
14 a paper copy or something else.

15 Taking a look at that list, to the best of your
16 knowledge, is that a fair and accurate representation of the
17 times that you met with -- either in person or via Zoom -- the
18 private prosecution team, with the exception of May 8th, which
19 is not on there?

20 A. I haven't really had a chance to -- it looks reasonably
21 close to the number of times, but I -- I haven't actually had a
22 chance to count them up or study the dates and that sort of
23 thing, but it looks reasonably accurate.

24 Q. And at each of those meetings, there was another Gibson
25 Dunn Crutcher attorney present with you; correct?

L5DVDON4

Thomson - cross

1 A. Yes, that's correct.

2 Q. On April 2nd, for example, there was Shane Baumgardner,
3 Reed Brodsky, Claudia Barrett, Randi Brown, right?

4 A. Correct.

5 Q. There was a May 11th meeting also, was there not?

6 A. I don't recall.

7 Q. What's today's date? 13th? That would have been two days
8 ago. You don't recall a meeting two days ago or --

9 A. Oh, I'm sorry. I didn't know what year you were talking
10 about. I didn't know what calendar year you were talking
11 about.

12 Q. I'm talking about this one.

13 A. We met on Tuesday evening, yes.

14 Q. And about how long did you spend at that meeting?

15 A. About an hour.

16 Q. Unless you wish to add these up yourself, I will represent
17 to you that these add up to 17 hours of your time. Do you have
18 any reason to dispute that?

19 A. I haven't done the math on the number of hours that they
20 add up to. That doesn't sound unreasonable though.

21 Q. So we can accept that subject to future modification as a
22 reasonable number?

23 A. A working hypothesis, maybe.

24 Q. Yeah, a working hypothesis. Thank you very much.

25 And the associate hours, about 42 hours associate

L5DVDON4

Thomson - cross

1 hours all together?

2 A. Without doing the math, I couldn't tell you.

3 Q. Okay. Well, you can either do the math or you can accept
4 the representation of 42 hours as a reasonable number?

5 A. I'm happy to accept that as your representation, yes.

6 Q. Would you like to do the math? Go ahead.

7 A. Not particularly.

8 Q. Pardon me?

9 A. I said I would not particularly like to do it. I can't
10 even manipulate the pages here.

11 Q. I don't want representations that you're not comfortable
12 accepting as some sort of reasonable number based on what
13 you've seen. So if you want to just call it my representation,
14 and then we really can't move on from there. I need you to
15 kind of either do the math or work with me a little here.

16 Your choice.

17 A. I have no reason to think that's not the correct math for
18 the numbers that are put down here, if that's your question.

19 Q. Okay. So 17 hours for you and 42 hours for them. We can
20 do that math, right? That's 59 hours.

21 A. Sounds about right.

22 Q. About right?

23 A. I believe that's correct.

24 Q. Thank you.

25 How much do you bill out per hour?

L5DVDON4

Thomson - cross

1 A. I think it's a little over \$1300.

2 Q. And I'm going to assume the associates bill out at less?

3 A. That's generally correct, yes.

4 Q. And Mr. Brodsky here, where does he fall between 1300 an
5 hour and less?

6 A. I don't know.

7 Q. You think he makes more than you?

8 Let's take a rough \$800 an hour for everybody all
9 together. And if you multiply that by the number of hours, you
10 get about \$47,000 worth of time meeting with the private
11 prosecutors. That fair to say?

12 A. It sounds like a reasonable approximation. Again, I
13 haven't done the math myself, but I'm willing to accept that as
14 your reasonable number.

15 Q. Okay. I'll take "reasonable approximation" as the answer.

16 Do you know if that time was billed?

17 A. I have no knowledge other than my own time, which was not
18 client-billed, no.

19 Q. Why not? I'm sorry, do you understand the question?

20 A. Yeah. I'm just trying to make sure that there are no other
21 issues.

22 Q. All right. Well, I'll let you cogitate about that for a
23 second.

24 (Pause)

25 Q. Ready? Let me know when you're ready. I'm sorry.

L5DVDON4

Thomson - cross

1 (Pause)

2 A. It's not time that was devoted to pursuing the client's
3 litigation.

4 Q. I'm sorry, could I have that answer read back or repeated?

5 THE COURT: (Reading)

6 "A. It's not time that was devoted to pursuing the client's
7 litigation."

8 Q. Was it time devoted to pursuing the client's interests?

9 A. It was time devoted to preparing to respond to a subpoena
10 that was served on me.

11 Q. And that subpoena was served by the private prosecutor?

12 A. Yes, by the special prosecutors.

13 Q. And when were you required to appear in response to that
14 subpoena?

15 A. I don't recall the exact date. It changed over time as the
16 trial got continued.

17 Q. Well, the subpoena that you're responding to now required
18 your appearance when?

19 A. If memory serves, on Monday, this past Monday.

20 Q. This past Monday.

21 A. Mm-hmm.

22 Q. So it did not require your appearance on March 4th, April
23 2nd, 2020, for example, right?

24 A. No, but there were prior subpoenas.

25 Q. Those are for your testimony at trial; correct?

L5DVDON4

Thomson - cross

1 A. Correct.

2 Q. Were there any subpoenas that the private prosecutors
3 issued for you to appear in their office?

4 A. No.

5 Q. Were there any subpoenas that they issued for you to answer
6 questions in your office?

7 A. No.

8 Q. Did they issue any subpoenas requiring you to answer their
9 questions over the telephone?

10 A. No.

11 Q. Were there any grand jury subpoenas issued to you?

12 A. Nope.

13 Q. So you understand this is a criminal trial, right?

14 A. I understand it's a criminal trial, yes.

15 Q. That Mr. Donziger is charged with crimes; correct?

16 A. Correct.

17 Q. The prosecutor is in charge of proving those crimes;
18 correct?

19 A. That's my understanding, yes.

20 Q. Right. I'm in charge of defending them; correct?

21 A. That's my understanding.

22 Q. And, of course, Judge Preska is in charge of verdict and
23 sentence, should there be one. Right?

24 A. That's my understanding.

25 Q. Okay. So this was a voluntary process on your part, with

L5DVDON4

Thomson - cross

1 the exception of your required appearance at the beginning of a
2 criminal trial; correct?

3 A. The trial testimony is the only compulsory subpoena
4 appearance, yes.

5 Q. So everything else was voluntary; correct?

6 A. In a sense it was voluntary, in a sense it was preparing
7 for an involuntary appearance in court.

8 Q. I'm sorry, is there some sort of requirement that you
9 prepare for an involuntary appearance that you're familiar
10 with? Not asking for your attorney work product, but is there
11 some requirement of doing that?

12 A. I don't know that there's a requirement, no.

13 Q. And you certainly never got a subpoena directing you to
14 review certain documents, right?

15 A. Correct.

16 Q. And you were never directed at a proceeding besides this
17 trial to review certain documents; correct?

18 A. Correct.

19 Q. So it is an entirely voluntary thing that you did in having
20 these meetings with the private prosecutor?

21 A. It was not a compulsory appearance and preparation, no,
22 that's true.

23 Q. It was voluntary; correct? You said, I will do this,
24 though I don't have to.

25 A. I wouldn't characterize it as necessarily voluntary, but I

L5DVDON4

Thomson - cross

1 would say it's -- it's preparation I wasn't legally required to
2 do, that's true.

3 Q. Why did you do it?

4 A. Well, if I'm going to give testimony, I wanted to make sure
5 that it's accurate and efficient.

6 Q. And it mattered to you to be as prepared as possible to
7 testify at this trial; correct?

8 A. Yes, I wanted to be prepared to testify accurately and
9 truthfully and efficiently.

10 Q. Because -- is it fair to say it's because -- and let's
11 focus on efficiency. You want this process to go on as
12 efficiently as possible; correct?

13 A. Certainly my own testimony, yes.

14 Q. And you understand where your efficiency in this process --
15 you understand what it's directed to; is that correct? Do you
16 understand what I'm saying?

17 A. I'm sorry, I don't understand.

18 Q. You understand that your efficiency is directed toward
19 giving this guy a criminal conviction?

20 MS. GLAVIN: Objection.

21 THE COURT: Sustained.

22 Q. You're out of the L.A. office, right?

23 A. That's true.

24 Q. How many times have you flown in to prepare for your
25 efficient, truthful, and accurate testimony?

L5DVDON4

Thomson - cross

1 A. This is the second time I've flown here.

2 Q. Who paid for that?

3 A. Chevron pays for that.

4 Q. Chevron paid for your flights here; correct?

5 A. Correct.

6 Q. To meet with the private prosecutor?

7 A. Correct.

8 Q. Is your flight coach?

9 A. No.

10 Q. Business class?

11 A. First class.

12 Q. First class Chevron paid for.

13 And that was to make sure that you could be
14 well-rested when you prepared for your accurate, efficient, and
15 truthful testimony?

16 A. That was to be as free of COVID as I could be on a plane.

17 Q. Are you inoculated now?

18 A. I am now, yes.

19 Q. You're flying back?

20 A. Yes.

21 Q. Flying back coach?

22 A. No.

23 Q. Flying back business class?

24 A. Nope.

25 Q. Flying back first class?

L5DVDON4

Thomson - cross

1 A. Yes.

2 Q. Yeah. Chevron paying for that too?

3 A. Yes.

4 Q. You get the sense that putting Mr. Donziger in jail is
5 something your client wants?

6 MS. GLAVIN: Objection.

7 THE COURT: Sustained.

8 MR. KUBY: I know. Mental state. Work product.

9 Does that mean I should keep going or I should wrap it
10 up?

11 THE COURT: If only.

12 MR. KUBY: Pardon me, Judge?

13 THE COURT: If only. At least you should keep going.

14 MR. KUBY: Okay. To another area.

15 BY MR. KUBY:

16 Q. Quick question: Is an appeal proper from a denial of a
17 stay? Can you take that to the Second Circuit?

18 A. From a district court denial of a stay? As a general
19 matter, I would think yes, you could file an appeal from --
20 well, if you're asking me -- I would need to know more to give
21 you an answer.

22 Q. Okay. Somebody files a motion for a stay before a district
23 judge. The district judge denies the stay of a discovery
24 order. Is that appealable as of right under a 1291 process?

25 A. Again, I'm not here as an expert witness.

L5DVDON4

Thomson - cross

1 Q. But you are such an expert, so help me here.

2 A. As a general matter, that would likely; although I can't
3 say in all circumstances, but would likely be vulnerable as an
4 interlocutory order not subject to direct appeal.

5 Q. Thank you.

6 I think earlier there was a discussion on direct about
7 a supersedeas bond. Had Mr. Donziger posted such a bond, would
8 that have stopped the discovery process?

9 A. No.

10 Q. It simply would have provided for a mechanism for you to
11 collect that \$813,000 at the end of the case in order to
12 actually stay collection activities, right?

13 A. Well, a supersedeas bond would stay execution of the money
14 judgment.

15 Q. And by "execution," it would stop efforts to collect money
16 from Mr. Donziger?

17 A. It would -- yes, that's -- that's as far as the -- the
18 judgment at issue, yes.

19 Q. At one point in this litigation, Chevron moved to take
20 Mr. Donziger's passports. Are you familiar with that?

21 A. I'm familiar with the proceedings about Mr. Donziger's
22 passport, yes.

23 Q. And that was a request made by Chevron as an additional
24 coercive sanction; correct?

25 A. Yes.

L5DVDON4

Thomson - cross

1 Q. What was the purpose of that?

2 A. I can't give you any confidential information about case
3 strategies.

4 MR. KUBY: Judge, we did have one GDC partner who gave
5 an answer to that question in response to Ms. Glavin. I'm just
6 curious to see whether the answer is the same for Mr. Thomson.
7 That seems reasonable enough.

8 Q. Why did you do it?

9 A. I can tell you based on the public filings that the
10 passport turnover order was designed as part of a series of
11 coercive sanctions attempting to compel compliance with Judge
12 Kaplan's orders.

13 Q. It wasn't to prevent Mr. Donziger from leaving the country
14 with his computers, right?

15 A. I believe -- I believe there was an argument made to that
16 effect, that it was, in fact -- that it would serve the purpose
17 also of potentially inhibiting the spiriting out of the country
18 electronic devices.

19 Q. It would also prohibit Mr. Donziger from traveling to
20 places other than Canada, right?

21 MS. GLAVIN: Objection. Relevance.

22 THE COURT: I'll allow it.

23 Are you able to answer that question, sir?

24 A. I don't know whether there are any -- there are no other
25 places he could travel without a passport. But generally one

L5DVDON4

Thomson - cross

1 needs a passport, is my understanding, to travel overseas.

2 Q. Right. But you don't need a passport to go to Canada,
3 right?

4 A. I don't know.

5 Q. So you weren't concerned specifically that he might spirit
6 his devices out to Canada; correct?

7 A. I can't tell you what the litigation strategy was. That's
8 work product. I can tell you what --

9 Q. Part of the litigation strategy was, in fact, to prevent
10 him from spiriting his devices out of the country, right?

11 A. I believe that was argued in briefs filed on the public
12 record, yes.

13 Q. Do you know which one, the brief?

14 A. I can't tell you offhand now.

15 Q. You do remember that from your knowledge of the public
16 record?

17 A. That's my recollection.

18 Q. You don't need a document to refresh your recollection
19 about that?

20 A. If you want to show me a document --

21 (Indiscernible crosstalk)

22 Q. Another quick pop quiz: Are you aware of any case ever
23 where the United States Court of Appeals for the Second Circuit
24 granted relief on *mandamus* regarding post-judgment discovery?

25 MS. GLAVIN: Objection. Relevance.

L5DVDON4

Thomson - cross

1 THE COURT: Why are we asking this?

2 It's a legal question, isn't it?

3 MR. KUBY: I'm sorry. We sat here for two hours
4 talking, eliciting facts in order for Ms. Glavin to make the
5 argument that Mr. Donziger had a gazillion different things
6 that he just could have done rather than violate the three
7 orders that he's charged with violating in Counts I, II, III.

8 I just want to know whether this witness is aware of
9 any case where that's actually happened in the Second Circuit.

10 THE COURT: I'm aware that's the question.

11 What's the relevance?

12 MR. KUBY: The relevance is, in fact, if the answer is
13 no, that would tend to suggest it would be futile for
14 Mr. Donziger to make that request.

15 MS. GLAVIN: Your Honor, this is a question of law.
16 And if we want to have an argument over Mr. Donziger's ability
17 to get a *mandamus* such that he doesn't have to produce
18 discovery such as privileged materials, we can get into that.
19 We can go through, talk about *Dinler v. City of New York*, which
20 is on point on this precise issue.

21 So I think if we want to argue about what the law is
22 and what Second Circuit holdings are, we can. I don't see how
23 it's relevant, unless it goes to Mr. Donziger's state of mind.
24 And if it goes to Mr. Donziger's state of mind without -- it's
25 Mr. Donziger's choice whether or not to take the stand. And if

L5DVDON4

Thomson - cross

1 he doesn't take the stand, there will be no adverse inference
2 against him. But Mr. Donziger is free to take the stand and
3 say what he believed.

4 THE COURT: The real question is why are we asking
5 this guy for his encyclopedic knowledge of case law?

6 I couldn't do that. Probably you couldn't.

7 MR. KUBY: Because he's here and he's really, really
8 smart. And it's a relevant fact, so I'd just as soon get it
9 from him.

10 THE COURT: Sustained.

11 Actually, I'm not sure it is relevant, because I am
12 not aware in the case law of any exception to the collateral
13 bar rule where the requested interlocutory relief from the
14 circuit would be futile. I'm not sure it's relevant.

15 MR. KUBY: You thought that's where I was going, huh,
16 Judge?

17 THE COURT: Yeah.

18 MR. KUBY: Yeah.

19 THE COURT: Was I wrong?

20 MR. KUBY: Moving on.

21 If we could turn to an entirely different area.

22 BY MR. KUBY:

23 Q. Okay. I'd like to show you document number 1901, also
24 counter-designated Defense DDDD. You saw that earlier in your
25 direct examination; is that correct?

L5DVDON4

Thomson - cross

1 A. Yes, that's correct.

2 Q. May I assume your familiarity with the contents of that?

3 A. I'm generally familiar with the contents of this, yes.

4 Q. I'm sorry?

5 A. I'm generally familiar with the contents of the documents,
6 yes.

7 (Continued on next page)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

L5DAADON5

Thomson - Cross

1 BY MR. KUBY:

2 Q. Okay. In prior proceedings I referred to is as an
3 interpretation order, and when I asked about the interpretation
4 order this is the document I am referring to. Okay?

5 A. Okay. 1986-1 in the record --

6 MS. GLAVIN: No, Mr. Kuby. I would like to show you
7 document 1986-1.

8 Q. Do you recognize that document?

9 A. Yes.

10 MR. KUBY: I'd offer it into evidence.

11 MS. GLAVIN: My mistake. This is in evidence. I was
12 incorrect. This is in evidence, Exhibit 1986-1.

13 MR. KUBY: If you could just repeat the "I'm sorry,
14 Mr. Kuby".

15 Thank you, Ms. Glavin.

16 MS. GLAVIN: You're welcome, Mr. Kuby.

17 Q. Earlier you read out loud a letter from Randy Mastro; is
18 that correct?

19 A. That's correct.

20 Q. And it was worth reading in its entirety at least according
21 to the prior prosecutor?

22 A. I was asked to read the whole letter, yes.

23 Q. So, I'd like you to read paragraph three out loud?

24 A. The district court's original judgment directed me to
25 "execute in favor of Chevron a stock power and such other and

L5DAADON5

Thomson - Cross

1 further documents as Chevron reasonably may request or as the
2 Court here after may order". The onus was thus on Chevron to
3 propose and request the form of stock power and any other
4 transactional documents deemed necessary to ensure compliance.
5 Chevron never did so. Indeed, Chevron never communicated with
6 me or my counsel about compliance in any respect until now.

7 Q. And if we could then turn to the penultimate paragraph on
8 page three, the one before the last. Could you read that out
9 loud too, please?

10 A. Given my ongoing compliance with the district court's order
11 that I neither sell nor transfer my shares in Amazonia, I do
12 not see any reason to force the issue of the execution of the
13 stock power unless your client insists.

14 THE COURT: A little more slowly, please, sir.

15 THE WITNESS: I'm sorry, your Honor.

16 I do not see any --

17 THE COURT: Go to "but I want".

18 A. But I want to assure you that I take my obligations to
19 comply with all court orders seriously. To that end, I am
20 willing to enter into a stipulation with Chevron and during the
21 pendency of the appeal regarding the disposition of the ARL
22 shares or the proceeds from such shares should I ever receive
23 any.

24 I have drafted such a stipulation for Chevron's
25 consideration and have attached it to this letter.

L5DAADON5

Thomson - Cross

1 Q. And to be clear, the stipulation that Mr. Donziger appears
2 to be referring to in this letter is the stipulation that you
3 testified about earlier on direct-examination?

4 A. The stipulation that is attached to this letter, yes.

5 Q. So, cause I don't have it here. So it's the same thing.
6 And you rejected that stipulation, correct?

7 A. My understanding is that Chevron did not accept the
8 stipulation, yes.

9 Q. And when was the -- withdrawn.

10 Did you, did Chevron through you or through others to
11 your knowledge prepare a stipulation from Mr. Donziger to
12 execute into 2014?

13 A. Not that I know of.

14 Q. 2015?

15 A. A stipulation for what? Maybe I'm not understanding your
16 question.

17 Q. A form of stock transfer power. I'm sorry. Did you
18 prepare one of those for him in 2014?

19 A. I don't believe that we sent him one in 2014, no, or 2015
20 rather. I'm sorry. I may not be understanding. Are you
21 asking me -- please, repeat the question.

22 Q. Let me just try to get this in a simpler way. Randy Mastro
23 complains about Mr. Donziger long overdue compliance in
24 transferring the Amazonia shares. Is that a fair
25 characterization?

L5DAADON5

Thomson - Cross

1 A. Randy Mastro sent Mr. Donziger a letter asking him to
2 transfer the shares, yes.

3 Q. Transfer the shares. Mr. Donziger writes back with this
4 letter saying I offer this stipulation to make sure that your
5 interests are protected in essence, correct?

6 A. Mr. Donziger wrote back to Mr. Mastro with this letter
7 proposing a stipulation, yes.

8 Q. And Chevron said no?

9 A. Chevron did not accept the stipulation, yes.

10 Q. Is there a difference between Chevron saying no and Chevron
11 did not accept the stipulation, yes. Are we just kind of
12 talking past each other here or are we really saying the same
13 thing?

14 A. They could be different. I don't know what you're actually
15 attempting to get at.

16 Q. With that question?

17 A. It you're asking me was there a correspondence from Randy
18 Mastro to Mr. Donziger --

19 Q. Chevron said no, right?

20 I know, judge, but this constant rephrasing of my
21 answer, of a yes or no answer is again, something lawyer
22 witnesses do but they shouldn't. They should just answer yes
23 or no or I can't answer yes or no.

24 THE COURT: I'll beat him with a wet noodle later.

25 MR. KUBY: I could suggest a little more -- never

L5DAADON5

Thomson - Cross

1 mind.

2 Q. Okay. Having your client Chevron said, nope, we don't
3 accept this, did you then send Mr. Donziger a stock transfer
4 document?

5 A. Yes. The form of stock transfer was transmitted to
6 Mr. Donziger and his counsel.

7 Q. In what year?

8 A. I believe it was contemporaneous with, it preceded the
9 letter to which Mr. Donziger -- the letter Mr. Donziger sent
10 that you just had up on the screen responds to it's in between
11 that correspondence and the original letter from Mr. Mastro.

12 Q. So, subsequent to Mr. Donziger proposing the stipulation to
13 which Chevron said no, did you again try to send an Amazonia
14 share stock power transfer to Mr. Donziger in 2014?

15 A. I just want to make sure that I've got the chronology. I'm
16 sorry.

17 Q. Don't be sorry. It's complicated and there's a lot here.
18 I get it.

19 A. I testified on direct with the exhibit on the screen
20 Mr. Bell sent Mr. Friedman and others a form of stock transfer.
21 If you are asking me other than that one in 2014 did Chevron
22 send Mr. Donziger another form of stock transfer, no, I don't
23 believe so.

24 Q. Okay. Well, the attorneys for Mr. Donziger did not have
25 Mr. Donziger execute that, right? You never got that executed

L5DAADON5

Thomson - Cross

1 stock transfer from counsel, did you?

2 A. I don't believe Chevron ever got the executed stock
3 transfer from anyone, no.

4 Q. Okay. But I want to try to keep the chronology tight here
5 if we can. Did Mr. Friedman, Ms. Littlepage, other attorneys
6 object to the form?

7 A. Not that I know of.

8 Q. And would you know that?

9 A. I at one time would have known that but I haven't gone back
10 to check.

11 Q. In any case, they don't respond or they say no --

12 MS. GLAVIN: Objection to form and he is testifying as
13 to what they said.

14 MR. KUBY: He said he doesn't know.

15 MS. GLAVIN: But you just asked a question that said
16 "and they said no".

17 THE COURT: Let's move it, kids. Come on.

18 MR. KUBY: I'm really trying, judge.

19 Q. Subsequent to Chevron's rejection of Mr. Donziger's
20 stipulation, when was the next time you presented him with a
21 stock transfer power to execute?

22 A. I'm not sure when the next time was.

23 Q. Okay. Give me -- do you know the year?

24 A. I would be speculating. I'm not sure when that was, no.

25 Q. 2014, maybe?

L5DAADON5

Thomson - Cross

1 A. If you'd like to show me a document, I'm happy to look at
2 it.

3 Q. 2015? You don't know?

4 A. Not that I know of.

5 Q. But this was something that you wanted to get, right?

6 A. It was something the Court ordered him to provide, yes.

7 Q. And you wanted it?

8 A. It was ordered by the Court as part of the RICO judgment,
9 yes.

10 Q. It was ordered by the Court in response to demands that
11 Chevron made in the underlying litigation, right?

12 A. It was part of the relief that the Court was ordering, yes.

13 Q. You wanted it, correct? Not so hard. Yeah, we wanted it.

14 A. Yes, Chevron wanted the stock transfer.

15 Q. So, is it fair to assume that you moved with alacrity after
16 rejecting Mr. Donziger's proposed stipulation?

17 A. Chevron, asked Mr. Donziger.

18 Q. That's not my question. My question is:

19 After Chevron said no to Mr. Donziger's proposed
20 stipulation, did you then move with alacrity to get this stock
21 power executed?

22 A. Chevron moved with alacrity after the RICO judgment was
23 handed down to get Mr. Donziger to execute the stock transfer.

24 Q. You're not understanding my question or are you
25 deliberating answering the question that I'm not asking? Do

L5DAADON5

Thomson - Cross

1 you understand that question?

2 A. No.

3 Q. I'll break it up. Are you deliberately not understanding
4 my question?

5 A. No.

6 Q. Are you not understanding my question?

7 A. Yes, I don't understand your question.

8 Q. Okay. Let's try this. When I say, after Chevron refused
9 to accept Mr. Donziger's stipulation, you understand that; is
10 that correct?

11 A. I understand those words, yes.

12 Q. And "after" means post Chevron refusal right? We're good
13 on that?

14 A. Yes, that's what those words mean.

15 Q. Okay. After Chevron refused to accept Mr. Donziger's
16 stipulation, did you move with alacrity -- do you understand
17 "move", yes?

18 A. Yes.

19 Q. You understand "alacrity"?

20 A. Yes.

21 Q. Did you move with alacrity to obtain a stock transfer
22 power?

23 A. Chevron just finished demanding him to execute a stock
24 transfer power. You are asking me did Chevron move --

25 Q. Did you go back to Judge Kaplan saying -- I'm sorry. After

L5DAADON5

Thomson - Cross

1 Chevron said no to Mr. Donziger's offer, did you go running
2 back to Judge Kaplan with alacrity saying judge, judge, we need
3 this, in more legal form?

4 A. Chevron did not immediately go back to Judge Kaplan and
5 seek to have further court orders. That's true.

6 Q. Moving on Government Exhibit 1986, if that's not in I'll
7 offer it. If it is in, it doesn't matter.

8 Let me show you document 1986 on the docket. Have you
9 seen that before?

10 A. I believe so, yes.

11 Q. Most critically Chevron completely fails to cite on this
12 point the applicable order of the Court, namely, its order
13 dated April 25, 2014. Do you know what Mr. Donziger was
14 referring to?

15 A. I believe he's referring to Judge Kaplan's stay order.

16 Q. What I am calling the interpretation order; is that
17 correct?

18 A. I believe those are the same things, yes.

19 Q. And in this document Mr. Donziger is arguing against, among
20 other things, he is arguing against discovery because Judge
21 Kaplan according to Mr. Donziger had ruled that he could
22 continue to finance his litigation the way it had always been
23 financed. That was Mr. Donziger's argument any way. I'm not
24 asking you to accept it.

25 A. That sounds like a paraphrase of Mr. Donziger's argument,

L5DAADON5

Thomson - Cross

1 yes.

2 Q. Fair. Moving to document 2018, do you recognize that?

3 A. Yes.

4 Q. What do you recognize it to be?

5 A. This appears to be Mr. Donziger's motion for declaratory
6 relief motion to dismiss Chevron's contempt motion.

7 Q. Again, I am going to paraphrase rather than anybody reading
8 the thing out loud, but is it fair to say in essence
9 Mr. Donziger is asking the Court, judge, you said I could
10 continue to finance the litigation the way I always had and now
11 I am being forced to provide discovery about how I am financing
12 the litigation. Would you please make a ruling on this? Can I
13 or can't I do this?

14 Is that a fair characterization?

15 A. It's not a complete characterization. It's kind of summary
16 form of aspects of what his argument here is, yes.

17 Q. Thank you.

18 Turn to docket 2118, please. You've seen this before,
19 Mr. Thomson?

20 A. Yes, I believe so.

21 Q. Let's get to the next page. This brings us to the real
22 issue, the elephant in the room that I have been trying to draw
23 attention to for over six months. I have repeatedly pleaded
24 with the Court to explain to me how it can even pretend that it
25 was contemptuous of me to continue to raise funds through

L5DAADON5

Thomson - Cross

1 pre-collection litigation finance when this Court itself
2 acknowledged in its April 2014 opinion on my stay motion that,
3 quote, this case always has been financed on the movement's
4 side by outside investors, closed quote. And assured me that
5 the RICO judgment will, quote, would not prevent Donziger from
6 being paid just as he has been paid at least \$958,000 and
7 considerably more over the past nine or ten years. In the same
8 opinion the Court explained that the RICO judgment's
9 constructive trust and monetization provisions impacted only,
10 quote, proceeds, closed quote, of a "collection" on the
11 Ecuadorian judgment. And when I worried --

12 THE COURT: Slowly.

13 MR. KUBY: And when I worried that the RICO judgment
14 would freeze up financing for my appeal and for ongoing
15 Canadian litigation the Court dismissed my concerns as so
16 "fanciful" and "farfetched" as to "border on the
17 irresponsible."

18 Do you remember reading that, yes?

19 A. Yes.

20 Q. I am going to continue, last paragraph.

21 Instead, apparently trapped by its own words the Court
22 has responded to this grave violation of my Constitutional
23 rights and those of my clients with a transparently abusive
24 strategy of silence and nonaction, it has refused to address
25 the key issue underlying Chevron's original contempt motion for

L5DAADON5

Thomson - Cross

1 over six months now. Meanwhile, the Court has green lighted it
2 Chevron's outrageously intrusive discovery and intimidation and
3 demonization, et cetera. You read that too, right?

4 A. I read this before, yes.

5 Q. And you understood that Mr. Donziger was again referring to
6 the April 25, 2014 interpretation order, correct?

7 A. Yes. He's referring to his interpretation of Judge
8 Kaplan's stay order, yes.

9 Q. I am going to pause there. You characterized what
10 Mr. Donziger was saying as his interpretation of Judge Kaplan's
11 interpretation order, correct?

12 A. Yes.

13 Q. Okay. And it's fair to say that Chevron had a different
14 view of it as articulated in your legal papers?

15 A. That's correct.

16 Q. And summaries are always dangerous in this but I am going
17 to try. Mr. Donziger's position was, Judge Kaplan, you said I
18 could continue to do what I was doing. I am doing it. There's
19 no basis for discovery. We'll call that the Donziger position
20 right; is that fair?

21 A. That's your summary of --

22 Q. That's what his position was but in far, far fewer words?

23 A. Right. It's not a complete expression but --

24 Q. And I am going to give an incomplete view of Chevron's
25 position as well as I understand it.

L5DAADON5

Thomson - Cross

1 One position Chevron had is that after Judge Kaplan
2 issued the injunction and a notice of appeal was filed, Judge
3 Kaplan had no jurisdiction to in any way modify that order,
4 right?

5 A. Yeah, Chevron argued that.

6 Q. And another position that Chevron took in the course of the
7 litigation was that whatever the order may or may not mean, it
8 expires on its own terms after certiorari was denied by the
9 Supreme Court, right?

10 A. Not sure I understand your question.

11 Q. Judge Kaplan styled this as a stay motion, correct, the
12 April 25th order?

13 A. I believe that's how the motion was styled by the moving
14 party.

15 Q. And it was a stay pending appeal, correct?

16 A. I'd have to go back and look at the motion but that sounds
17 correct.

18 Q. Okay. And once the appeal had been finally and completely
19 denied by the Second Circuit and the Supreme Court refused
20 review, Chevron took the position that the stay was gone,
21 correct?

22 A. I don't recall that being expressed that way. So, if
23 there's a document you'd like to show me I'd be happy to look
24 at it.

25 Q. Did you ever convey to Judge Kaplan in response to the

L5DAADON5

Thomson - Cross

1 August 25 interpretation order that he lacked jurisdiction to
2 modify the injunction?

3 A. I believe in response to Mr. Donziger's arguments that
4 Judge Kaplan had modified the injunction that the Court, Judge
5 Kaplan, would have been without jurisdiction to modify the
6 injunction, yes.

7 Q. And when did you file that?

8 A. I'm not sure what the earliest time that would have been
9 maybe but --

10 Q. Years?

11 A. If I could finish. It was certainly part of the appellate
12 briefs that Chevron filed in opposition to Mr. Donziger's
13 appeal from the contempt motion.

14 Q. 2017?

15 A. No, that would have been later.

16 Q. 2018?

17 A. Yeah.

18 Q. So, the first time you told Judge Kaplan that he lacked
19 jurisdiction was when you told the second circuit that he
20 lacked jurisdiction?

21 MS. GLAVIN: Objection as to relevance.

22 MR. KUBY: You know we sat all through the briefing
23 process.

24 THE COURT: What is the relevance of the question and
25 timing of whatever filing was made to say that Chevron believed

L5DAADON5

Thomson - Cross

1 Judge Kaplan had no jurisdiction.

2 MR. KUBY: I will tell you relevance, judge.

3 THE COURT: Oh, I can't wait.

4 MR. KUBY: I think you can probably guess.

5 Mr. Donziger for over a year was trying to get clarification
6 from Judge Kaplan as to whether he could or could not do the
7 things that the April 25 order reasonably suggested he could
8 do. And if Chevron were litigating in good faith here they
9 would have said to Judge Kaplan excuse me, Judge Kaplan, you
10 had no right to issue the April 25 order as it's being
11 interpreted because of lack of jurisdiction. So, either
12 clarify your order or we will then go running up to the circuit
13 on mandamus because you have issued an order that lacked
14 jurisdiction and this whole mess would have been resolved.

15 THE COURT: So, say you. But in any event, the real
16 question is how is it relevant to any of the facts at issue
17 here, the issuance of the --

18 MR. KUBY: -- to circumvent your collateral bar rule
19 with a different line of questioning.

20 THE COURT: The timing of Chevron's filing a piece of
21 paper with respect to Judge Kaplan's jurisdiction or lack
22 thereof is in my view as far as I can tell not relevant to
23 whether there was an issuance of an order to Mr. Donziger
24 whether he disobeyed it and his knowledge and willfulness in
25 doing so.

L5DAADON5

Thomson - Cross

1 MR. KUBY: I understand, judge.

2 THE COURT: That's my question.

3 MR. KUBY: As phrased, not a bit.

4 THE COURT: All right. Then let's move on.

5 MR. KUBY: So, you're sustaining. Yeah?

6 THE COURT: I think you sound like you are agreeing
7 with me.

8 MR. KUBY: Okay. I am going to shift to another area
9 which I also don't expect to get very far with.

10 THE COURT: Have your break now, sure. Let's go.

11 (Recess)

12 THE COURT: Thank you, ladies and gentlemen. Won't
13 you be seated.

14 Sir.

15 MR. KUBY: Thank you, judge.

16 Mr. Thomson, just to briefly toggle back to another
17 subject. I know during the meetings you had during the
18 meetings you had with the private prosecutors they had you
19 review I am going to say numerous documents involved in this
20 litigation, is that fair to say?

21 A. Yeah, there were a number of documents, right.

22 Q. And you reviewed them with them, correct?

23 A. Yes.

24 Q. They would ask you questions. You'd explain what this was.
25 You'd explain the significance in terms of public record,

L5DAADON5

Thomson - Cross

1 right?

2 A. In a manner of speaking, yes.

3 Q. And that's my manner of speaking.

4 Because you've affirmed that you want to be efficient
5 and you want to be accurate and you want to be truthful, did
6 you do any work preparing to speak to the private prosecutors
7 before you met with them?

8 A. You mean the first time I met with them.

9 Q. At any point in meeting with them?

10 A. Yes, I've done some reviewing of some of the documents on
11 my own.

12 Q. And when the document would come up at a particular meeting
13 you might like I don't want to call it homework but kind of
14 what it was, right? Did you do a little homework? I know they
15 are going to ask you about this at the next meeting so I want
16 to be prepared so I want to be efficient?

17 A. Just kind of familiarize myself with the documents I
18 thought I would be asked about.

19 Q. Do you have any sense of how many hours you spent on that?

20 A. I haven't really tallied it up.

21 Q. Were those donated hours as well or did Chevron get billed
22 for those?

23 A. I have not billed my time for that, no.

24 Q. So, that was another contribution to the process, right?

25 A. Well, I wouldn't characterize it that way but I didn't bill

L5DAADON5

Thomson - Cross

1 the client for that time no.

2 Q. Why not?

3 A. It didn't seem like it was something that was part of the
4 client's litigation.

5 Q. Is flying you out here first class part of the litigation
6 of Chevron's --

7 A. No, it is not part of Chevron's litigation.

8 Q. But they look, they're a good client and they do you a
9 solid, right?

10 A. I don't know what that means to do me a solid but --

11 Q. You don't get out much, do you, Mr. Thomson? I'm sorry.

12 A. I read a lot.

13 Q. I'm sorry. Moving on, you have testified a bit about your
14 activities. Well, with respect to the 1782s; is that correct?

15 A. That's correct.

16 Q. And so just to make sure I understand the chronology
17 correctly and I will freely admit prior to becoming defense
18 counsel in this case, I had never heard of a 1782. So, excuse
19 my ignorance and feel free to correct me. Mr. Donziger files a
20 lawsuit in the Southern District of New York back in 1993
21 alleging damage done by, I think it was then Texaco to the Lago
22 Agrio region, right?

23 A. Something like that.

24 Q. And there's about eight years of litigation more or less
25 about whether this case should be tried in the Southern

L5DAADON5

Thomson - Cross

1 District or tried in Ecuador, correct?

2 A. More or less, yes.

3 Q. Chevron's position that it should be tried in Ecuador?

4 A. That was Texaco's position.

5 Q. And Chevron brought Texaco, right?

6 A. A subsidiary merged with Texaco, right.

7 Q. Is that like adjacent to buying something? Is it like
8 adjacent to buying something, they absorbed them, right?

9 A. It's a more accurate description of the corporate
10 transactions but Texaco became a subsidiary of Chevron.

11 Q. Got it. And Mr. Donziger's action was originally assigned
12 to Judge Broderick, correct?

13 A. I don't know who the original judge was.

14 MS. GLAVIN: Objection to relevance.

15 THE COURT: What are you doing?

16 MR. KUBY: Trying to get through the process here.

17 And then Judge Rakoff had it, right?

18 MS. GLAVIN: Objection to relevance.

19 THE COURT: What are you going to ask the witness?

20 MR. KUBY: I am just trying to briefly, a brief
21 history of the 1782 so I can ask some questions about the
22 1782s. This is just a tiny bit of background so far.
23 Everybody will know the point where you are going to tell me
24 stop. We're not quite there yet but trust me, I am getting
25 there.

L5DAADON5

Thomson - Cross

1 MS. GLAVIN: And the objection is that the build up to
2 a point where he has to stop is objectionable as well. It is
3 irrelevant that Judge Rakoff had the proceeding at one point.
4 It is irrelevant that Judge Broderick had it at one point.
5 Three elements. Relevance, was there a court order clear and
6 unambiguous? Did the defendant violate it? Did the defendant
7 knowingly violate it? What relevance is it that Judge
8 Broderick or Judge Rakoff had portions of this proceeding in
9 the 1990s.

10 MR. KUBY: Now, I believe I can establish through this
11 witness that this witness and others with whom he was acting in
12 concert manipulated the 1782 process, the post judgment process
13 to first get his case in front of Judge Kaplan instead of Judge
14 Rakoff to whom it had should gone. Number two, let me just
15 we'll make a record here. The press has even left except for
16 Tara who wouldn't even be here except for me.

17 UNIDENTIFIED FEMALE: "Cara".

18 THE COURT: Is he chopped liver?

19 UNIDENTIFIED MALE: Come on.

20 MS. GLAVIN: I am sure that Ryan is here for Mr. Kuby
21 as well.

22 MR. KUBY: Number two, I would be able to demonstrate
23 that after manipulating the 1782 process to end up in front of
24 Judge Kaplan, they exploited that manipulation to make sure
25 that the RICO case was filed in front of the judge that they

L5DAADON5

Thomson - Cross

1 had developed a deep and abiding love for and it has stayed
2 with him unto this very day. It goes --

3 THE COURT: You know, judges --

4 MR. KUBY: -- in evading.

5 THE COURT: Judges are generally not manipulated and
6 pushed around by litigants. If you have a question for him,
7 ask the question.

8 MR. KUBY: I'm not suggesting that Judge Kaplan was
9 either manipulated or pushed around.

10 THE COURT: Counsel --

11 MR. KUBY: I think Judge Kaplan was a willing
12 participant.

13 THE COURT: Counsel, enough of your testimony, please.

14 MR. KUBY: I am making an offer of proof and that's
15 what I would intend to establish through a line of questioning.

16 THE COURT: So, we all know where you're going. Ask
17 the questions that you want but let's not do any more build up.
18 You've oriented us as to time and space.

19 BY MR. KUBY:

20 Q. So you went to, the case was moved to Ecuador, correct?

21 A. There was a case filed in Ecuador, yes. It was not the
22 same case as the one that was filed --

23 Q. Well, nothing is the same as anything else?

24 THE COURT: Counsel, counsel, question.

25 MR. KUBY: Nothing is the same as anything else, is

L5DAADON5

Thomson - Cross

1 it, Mr. Thomson? Look, you've got a doctorate in philosophy.

2 THE COURT: Counsel, really, now you are wasting my
3 time.

4 Q. And you lost in Ecuador, right?

5 A. I'm sorry.

6 Q. The Ecuadorian court entered a judgment against the Chevron
7 Corporation?

8 A. Yes, eventually, it did.

9 Q. Right. And after that happened you filed 10MC-0001; is
10 that correct?

11 A. No, it's not correct.

12 Q. You didn't do that after the -- did I miss a zero?

13 A. No.

14 Q. Tell me what's incorrect about it.

15 A. The Ecuador judgment was issued February 14, 2011.

16 Q. Okay. Fair enough. Back in April of 2010 you filed a
17 1782; is that correct?

18 A. I don't have the date. Which 1782? There are a number of
19 them.

20 Q. Let's show the witness Exhibit I. Take a look at what
21 we've marked as Defense Exhibit I for identification. Are you
22 familiar with that document?

23 A. No. I don't think so.

24 Q. You're not aware that that was a -- well, if you look at
25 the front it was a 1782, correct?

L5DAADON5

Thomson - Cross

1 A. It appears to be an order referring to one, right.

2 Q. And you were active in the 1782 litigation, correct?

3 A. Correct.

4 Q. So, did you file a motion pursuant to ex parte pursuant to
5 28 U.S.C. 1782 to conduct discovery?

6 A. I believe so, yeah.

7 Q. And this you filed it on April 10, 2010?

8 A. That appears to be what this says, yeah, I don't personally
9 recollect that.

10 Q. And you made it return -- and you proceeded by going to
11 Part One; is that correct?

12 A. I've never personally been to Part One no, if it's what you
13 are you are asking.

14 Q. Do you know where this was filed?

15 A. No, I don't.

16 Q. Do you know if it was filed in front of Judge Rakoff?

17 A. I don't know.

18 Q. Do you know if it was designated as a related case?

19 A. I don't know.

20 Q. Let me show you Exhibit I-1 for identification.

21 Do you recognize that?

22 A. I don't recognize it, no.

23 Q. Do you know what it is?

24 A. I can read it but I don't recognize it, no.

25 Q. I'm asking if you know what it is?

L5DAADON5

Thomson - Cross

1 A. It appears to be a civil coversheet.

2 Q. You know what that is, right?

3 A. In general, yes.

4 Q. And the number on top 11 CV 06191 that, have you seen that
5 number before?

6 A. Yes.

7 Q. And what does that number relate to?

8 A. That's at RICO litigation.

9 Q. The RICO litigation you've been on more or less for the
10 past decade?

11 A. Correct.

12 Q. Okay. If you look down there's, has this or a similar case
13 been filed in SDNY at any other time, yes or no? What box is
14 checked on that?

15 A. It says no.

16 Q. And let's face it. Similar is a subjective term, correct?

17 A. Yes.

18 Q. I mean one person's similarity is another person's -- this
19 has nothing do with that, correct?

20 A. It would be open to some kind of interpretation.

21 THE COURT: Counsel, let him finish. All right.

22 It would be open to some kind of interpretation; is
23 that it?

24 THE WITNESS: Yes, your Honor.

25 Q. Is there a signature on this document or a name of the

L5DAADON5

Thomson - Cross

1 filer?

2 A. Yes.

3 Q. And who would that person be?

4 A. It looks like it's --

5 Q. First letter looks like an "R", right?

6 A. It's hard to read.

7 Q. Okay. We will work it through together. The first letter
8 kind of looks like an "R"?

9 A. Kind of.

10 Q. The last letter kind of looks like a "Y"?

11 A. Well, it is not much of a "Y".

12 Q. Well, it's not a well done "Y" the middle initial is very
13 clear though. It is an "M"?

14 A. I would agree with that.

15 Q. Yeah?

16 A. Um-hmm.

17 Q. And the first letter in the last name looks very much like
18 the earlier "M", correct?

19 A. Yes.

20 Q. And then there's a "T", some other letters and a "T"; is
21 that correct?

22 A. That's how I would read it, yeah.

23 Q. And then there's something that could be an "R" or could be
24 a hiccup. It's unclear?

25 A. I see that.

L5DAADON5

Thomson - Cross

1 Q. And then an "O"?

2 A. Probably.

3 Q. Does the name "Randy M. Mastro" ring a bell?

4 A. Yes, the name "Randy Mastro" rings a bell.

5 Q. And assuming this happens to be his signature, he's a
6 partner at Gibson Dunn & Crutcher, correct?

7 A. That's right. That's true.

8 Q. He is one of the lead attorneys on this?

9 A. That's true.

10 Q. If we could go back up, there's a tiny little box at the
11 bottom if we could just highlight the tiny little box at the
12 bottom. There is a request for damages, is that right, not a
13 numerical but there's a place for demand?

14 A. Yeah, there's a demand.

15 Q. It says "TBD at trial". What does that mean?

16 A. I assume that means to be decided or determined.

17 THE COURT: Mr. Thomson, I need you to keep your voice
18 up.

19 THE WITNESS: Sorry, your Honor.

20 THE COURT: Thank you.

21 Q. So, you were prepared at trial to prove damages; is that
22 correct?

23 A. It would seem to indicate that the amount of damages would
24 be determined at trial, yes.

25 Q. And whatever that amount was because this was a RICO civil,

L5DAADON5

Thomson - Cross

1 RICO case that would be triple; is that right?

2 A. In a RICO case the damage award is trebled, correct.

3 Q. And right below that there's a jury demand, yes or no,
4 correct?

5 A. Correct.

6 Q. And what did the human, we will for purposes of argument
7 call Randy M. Mastro indicate on the jury demand?

8 A. The box for yes is checked.

9 Q. There was a time however shortly before trial that you
10 dropped the jury demand, right?

11 A. There is a trial or time, yes, that Chevron stipulated to
12 drop the demand for damages, yes.

13 Q. Which also consequently meant that Mr. Donziger would not
14 be entitled to trial by jury, correct?

15 A. Chevron waived its entitlement to trial by jury, yeah.

16 Q. So, doing it waived three times whatever the damages
17 Mr. Donziger caused them?

18 A. Yes, it stipulated to.

19 Q. Right. Now, also at this form to you there's language, do
20 you claim this case is related to a civil case now pending in
21 SDNY. And in fact you answered and if so, state. See that?

22 A. I do.

23 Q. And you listed Lewis A. Kaplan. Is that correct?

24 A. Yes.

25 Q. And the case that it was pending at that time was your 1782

L5DAADON5

Thomson - Cross

1 motion for discovery against Mr. Donziger; is that correct?

2 A. And that's the case number, yes.

3 Q. And that's what the case was, right? You received
4 discovery of Mr. Donziger under 10MC00002, correct?

5 A. Yes, that's correct.

6 Q. And I guess the term related is also one of the subjective
7 terms; is that correct?

8 A. I suppose it could have very -- implications, yes.

9 Q. And you knew that once this was filed as a, quote/unquote,
10 related case, it would be Judge Kaplan who would make the
11 initial decision as to whether he wanted to keep it or whether
12 he just wanted to wheel it out to somebody else. You are aware
13 of that, yes?

14 A. I don't personally know the inner workings.

15 Q. But you know he would --

16 THE COURT: Let him finish.

17 Q. And he kept it?

18 A. Yes, he kept the case.

19 Q. Still has it?

20 A. Correct.

21 MR. KUBY: I am happy to say, judge, I actually got
22 through that without much of an objection. I'm sorry. I may
23 not be done.

24 (Pause)

25 MR. KUBY: I'm sorry. My client who is actually

L5DAADON5

Thomson - Cross

1 taking an active interest in this case asked me to ask you a
2 couple of extra questions and I think that his point is well
3 taken.

4 In addition to the time that you spent -- in addition
5 to the time that you donated to this case, in addition to the
6 time you donated to this case, were you aware that other Gibson
7 Dunn Crutcher partners were donating their time to the case?

8 A. I wouldn't characterize it as donating time to the case but
9 if I could finish my answer, yeah, I was aware that there were
10 other partners who were involved in representing me as a
11 witness in this lawsuit, for example.

12 Q. And I am talking about the meetings with the private
13 prosecutors preparing for those meetings and sitting for those
14 meetings unless I did not --

15 THE DEFENDANT: -- what are you asking me.

16 THE COURT: The two of you are talking over each
17 other.

18 Mr. Thomson, if you keep your voice up then Mr. Kuby
19 is going to be able to hear that you are talking and he
20 probably won't talk. Probably.

21 Question?

22 THE WITNESS: Thank you, your Honor.

23 Q. You said you wouldn't characterize it as a donation and I
24 don't want to force you to characterize something in a manner
25 in which you are not comfortable, contribution?

L5DAADON5

Thomson - Cross

1 A. I wouldn't characterize it as a contribution.

2 Q. How would you characterize it? Give me a word "swag"? I
3 mean, help me here.

4 A. It's a subpoena to testify at trial and devoting time to
5 preparing to testify and devoting time to helping me get ready
6 to testify.

7 Q. All of which except your testimony is voluntary, right?
8 Can we voluntary, that is what you're not required to do by
9 law, I will characterize as voluntary. Will you accept that
10 for purposes of the next few questions?

11 A. If not compelled, right.

12 Q. Okay. So, are you aware that other Gibson Dunn Crutcher
13 partners were providing not compelled time to prepare for this
14 trial?

15 MS. GLAVIN: Your Honor, I'm going to object to the
16 form of the question. I think if Mr. Kuby phrased it as does
17 he have personal non hearsay knowledge as to whether other
18 Gibson Dunn partners does he have personal direct knowledge
19 that is not based on hearsay?

20 THE WITNESS: No, I don't.

21 Q. You don't have any personal non direct knowledge. You
22 don't have any personal direct knowledge of these non compelled
23 meetings whether they existed or not; is that right?

24 A. I am not entirely sure what you are asking but, no, I think
25 the answer is no.

L5DAADON5

Thomson - Redirect

1 Q. It's a hearsay objection. So, I guess my question is when
2 you like strolled down the corridors or giant edifice that is
3 Gibson Dunn Crutcher, would you be happy to see, for example,
4 Randy Mastro sitting down with Ms. Glavin, Ms. Armani Mr.
5 Maloney, two FBI agents, Reed Brodsky and bunch of other folks
6 say I wonder if he is doing the same thing I am doing?

7 A. No, I haven't been to my office in over a year and a half
8 and I haven't been to New York other than for this trial.

9 Q. Lucky you.

10 A. I'm not complaining. I'm just remarking.

11 MR. KUBY: Thank you, judge.

12 THE COURT: Thank you, sir.

13 Previous redirect.

14 REDIRECT EXAMINATION

15 BY MS. GLAVIN:

16 Q. Good afternoon, Mr. Thomson.

17 A. Hello.

18 Q. Mr. Kuby asked you a series of questions on
19 cross-examination about your meetings with me; is that correct?

20 A. That's correct.

21 Q. If we could pull up the Defense Exhibit which is the chart.

22 (Pause)

23 THE COURT: Who's phone is talking?

24 MR. KUBY: Ms. Glavin, is apparently questioning

25 Mr. Aaron Mark Page who is not represented by counsel and --

L5DAADON5

Thomson - Redirect

1 THE COURT: All right. Mr. Kuby, I can hear some kind
2 of phone noise whether it's a phone on speaker or a broadcast
3 from where I am sitting.

4 MR. KUBY: Okay. If the --

5 THE COURT: I want to know what it is.

6 MR. KUBY: If the Court wants to make inquiries
7 obviously that's the Court's prerogative but Ms. Glavin has not
8 yet been given a roving commission --

9 THE COURT: I'm asking the question.

10 Sir, what is the noise I am hearing?

11 MR. PAGE: It was a preloaded video that as I was
12 scrolling through apps it just started playing automatically.

13 THE COURT: Counsel, do me a favor this much to
14 serious to be watching videos and looking at apps.

15 MR. PAGE: I was not watching. It was preloaded.

16 THE COURT: All right. Unfair. And besides that at
17 my age I don't know what it means. Cut it out.

18 MR. KUBY: It's not bad.

19 THE COURT: So says you.

20 MR. KUBY: So says me.

21 THE COURT: All right. Question. Can we get that
22 chart back up.

23 BY MS. GLAVIN:

24 Q. Mr. Thomson, you were asked a number of questions by
25 Mr. Kuby about your meetings with me; do you recall that?

L5DAADON5

Thomson - Redirect

1 A. Yes.

2 Q. And Mr. Kuby showed you this chart which summarizes the
3 dates, the meetings and in approximate length; is that correct?

4 A. That appears to be correct, yes.

5 Q. And the chart indicates that your first meeting with me was
6 on April 2nd of 2020; is that right?

7 A. That's what it says, yes.

8 Q. Were you aware that there was a June trial date in this
9 matter that had been scheduled for 2020?

10 A. In April, yes, I was aware of that.

11 Q. I'm sorry. Yes. Were you aware that the first trial date
12 in 2020 scheduled for this criminal contempt trial was for
13 June 15?

14 A. Yes, that sounds correct.

15 Q. Okay. So, you had a meeting with me on April 2nd; is that
16 correct?

17 A. I believe so, yes.

18 Q. Okay. And then did you have another meeting with me on
19 June 10; is that correct?

20 A. I don't recall the exact date. That sounds right.

21 Q. If we could go to the next page.

22 A. It seems correct. I just don't know precisely what day in
23 June we had a call.

24 (Continued on next page)

L5DVDON6

Thomson - redirect

1 BY MS. GLAVIN:

2 Q. And had you received a subpoena for your testimony for the
3 June 15th trial?

4 A. I believe so, yes.

5 Q. And in your meetings with me, what happened? As in these
6 two meetings in the run up to the June 15th trial, what
7 happened in those meetings?

8 MR. KUBY: Judge, just a cautionary note, because I'm
9 looking at the clock. What happened at X number of hours
10 meeting just opens things up. If that's the way she wants to
11 ask the question, she's the mistress of the question, but there
12 will be more.

13 THE COURT: If the witness goes on for four hours,
14 like the meeting indicates, we won't be having that, so you
15 need not worry.

16 MS. GLAVIN: No, I'm happy to lead him through it.

17 BY MS. GLAVIN:

18 Q. But Mr. Thomson, did you review documents with us?

19 A. I believe so, yes.

20 Q. Then was the June 15th trial date adjourned?

21 A. At some point, yes, it was.

22 Q. Do you recall if it was adjourned to a date in September?

23 A. Yes, it was.

24 Q. Did you receive a subpoena for your testimony?

25 A. Yes, I did.

L5DVDON6

Thomson - redirect

1 Q. And did you travel to New York for that trial date?

2 A. Yes, I did.

3 Q. And at that period of time, did you travel -- withdrawn.

4 Were there any quarantine rules at that time?

5 A. Yes, there were.

6 Q. And how far in advance of your testimony did you travel to
7 New York?

8 A. I got there more than 14 days in advance of my testimony so
9 that I could do the 14-day quarantine.

10 Q. And then was the September trial date adjourned while you
11 were quarantining?

12 A. Yes, I believe it was, about day ten of my quarantine.

13 Q. And then was there another trial date in November?

14 A. Yes, there was.

15 Q. And in connection with the November trial date, did you
16 have a subpoena?

17 A. I believe so, yes.

18 Q. And did you meet with myself, my colleagues, and the FBI
19 agent again in connection with the June trial date?

20 A. You mean the November trial date?

21 Q. Sorry, the November trial date.

22 A. I don't recall. I just don't recall the dates for the
23 meetings, sorry.

24 Q. Then, Mr. Thomson, there is this trial date, is that
25 correct, the May 10th trial date?

L5DVDON6

Thomson - redirect

1 A. Yes.

2 Q. How many months were there between the November trial date
3 and this May trial date?

4 A. Well, December, January, February, March, April. Almost
5 seven months.

6 Q. And did you have meetings with us again in the weeks before
7 this May 10th trial date?

8 A. Yes.

9 Q. Mr. Thomson, you were asked a number of questions about
10 whether your meetings with myself and my colleagues, special
11 prosecutors and the FBI agent, were voluntary; is that right?

12 A. Yes, I believe so.

13 Q. Were you looking forward to those meetings, sir?

14 MR. KUBY: Judge, I object. I mean I -- really. I'm
15 sure everybody would rather be doing something other than what
16 we are doing, with the possible exception of the Court.

17 THE COURT: You're so correct.

18 Do we care if he had looked forward to them?

19 MS. GLAVIN: No.

20 Q. Mr. Thomson, why did you meet with us ahead of your
21 testimony?

22 A. In order to make sure that I was able to give accurate,
23 truthful, and hopefully efficiently-gone-through testimony.

24 Q. Now, you were asked a number of questions about Government
25 Exhibit 1986-1.

L5DVDON6

Thomson - redirect

1 MS. GLAVIN: If we could pull that up.

2 Q. This is the October 21st letter from Mr. Donziger replying
3 to Mr. Mastro; is that right?

4 A. This is the August 21 --

5 Q. 2014.

6 A. Right.

7 Q. And this is the letter in which Mr. Donziger attaches a
8 stipulation that he wanted Chevron to enter into; is that
9 right?

10 A. That's correct.

11 Q. And Mr. Kuby asked you a number of questions about this on
12 cross; is that correct?

13 A. Yes, I believe so.

14 Q. If we could go to Judge Kaplan's order, which is Government
15 Exhibit 1901. We could go to the last page. This is what I
16 believe Mr. Kuby referred to as the interpretation order during
17 your cross-examination.

18 A. Yes, that's correct.

19 Q. Does this order direct Mr. Donziger to enter into a
20 stipulation with Chevron?

21 A. No, it does not.

22 Q. Does this order direct Chevron to do anything?

23 A. No, it does not.

24 Q. Who, if anyone, does this order -- is this -- withdrawn.

25 Who, if anyone, is this order directed to?

L5DVDON6

Thomson - redirect

1 A. To Mr. Donziger.

2 Q. And what does it direct Mr. Donziger to do?

3 A. To execute in favor of the clerk the stock power,
4 transferring to the clerk his interest in the shares of
5 Amazonia.

6 Q. If we could go to the RICO judgment, which is Government
7 Exhibit 1875. With respect to paragraph 1 of the RICO
8 judgment, does paragraph 1 direct Chevron to do anything?

9 A. No, I don't believe so.

10 Q. Who is paragraph 1 directed to?

11 A. To Mr. Donziger and the other judgment debtors.

12 Q. And what does the last sentence of paragraph 1 direct
13 Mr. Donziger to do?

14 A. Donziger shall transfer and forthwith assign to Chevron all
15 such property that he now has or hereafter may obtain.

16 MS. GLAVIN: If we could go to paragraph 3 of the RICO
17 judgment.

18 Q. Does paragraph 3 of the RICO judgment direct Chevron to do
19 anything?

20 A. No, it does not.

21 Q. To whom, if anyone, does paragraph -- is paragraph 3
22 directed to?

23 A. To Mr. Donziger.

24 Q. What does it direct Mr. Donziger to do?

25 A. To execute in favor of Chevron a stock power transfer into

L5DVDON6

Thomson - redirect

1 Chevron all his interest in Amazonia.

2 Q. With the exception -- now focus on paragraph 3. With the
3 exception of Judge Kaplan's April 25th, 2014 order, which is
4 Government Exhibit 1901, did Judge Kaplan in any way modify
5 Mr. Donziger's obligations with respect to paragraph 3?

6 A. No.

7 Q. Going back to Government Exhibit 1901, go to the last page.
8 With respect to the order directing Mr. Donziger to execute in
9 favor of the Clerk of the Court a stock power, did Mr. Donziger
10 apply to Judge Kaplan for relief or modification from that
11 order?

12 A. I don't believe so, no.

13 Q. Did Mr. Donziger send to Judge Kaplan the stipulation
14 attached to Government Exhibit 1986-1 and propose that as an
15 alternative to what Judge Kaplan directed him to do at
16 Government Exhibit 1901?

17 A. I don't believe so, no.

18 Q. You were asked some questions on cross-examination about
19 Mr. Donziger -- withdrawn.

20 You were asked questions on cross-examination about
21 Judge Kaplan having found that Mr. Donziger had waived
22 privilege for failure to provide a privilege log.

23 Do you remember that?

24 A. Yes.

25 Q. And during the course of that cross-examination, do you

L5DVDON6

Thomson - redirect

1 remember Mr. Kuby asking you about whether or not Mr. Donziger
2 had filed --

3 MR. KUBY: I'm sorry, Rita, you hit the wrong button
4 there.

5 MS. GLAVIN: I did. That's it.

6 THE COURT: (Reading)

7 "Q. And during the course of that cross-examination, do you
8 remember Mr. Kuby asking you about whether or not Mr. Donziger
9 had filed -- "

10 Q. Had filed a privilege log?

11 A. Yes, I remember generally.

12 Q. If I could turn your attention to Government Exhibit 401.

13 MS. GLAVIN: And if we could go to ECF page 17. If we
14 could go to --

15 Q. This is Judge Kaplan's November 29th, 2010 opinion; is that
16 right?

17 A. Yes.

18 Q. Now, Judge Kaplan -- and please correct me if I'm wrong,
19 you had testified during direct examination that in an October
20 20th, 2010 opinion, Judge Kaplan had determined there was a
21 waiver for failure to produce a privilege log; is that right?

22 A. Yes, I believe that's correct.

23 Q. This is a subsequent opinion by Judge Kaplan, November 29
24 of 2010 on that same issue; correct?

25 A. Yes.

L5DVDON6

Thomson - redirect

1 Q. We could go to paragraph -- Section C, the appropriate
2 course of action. And if you could read out loud what Judge
3 Kaplan stated here.

4 A. Donziger argues that no privilege log was required before
5 the Court ruled on Donziger's motion to quash; and that his
6 failure to have supplied such a log therefore should not have
7 resulted in waiver. While the Court already has ruled on that
8 question, it accepts his invitation to reconsider the waiver
9 issue.

10 Both Federal Rule 26(b)(5) and 45(c) and S.D.N.Y.
11 Local Rule 26.2 require the submission of a privilege log where
12 a person served with a document request or subpoena objects to
13 the production of requested documents on the ground of
14 privilege. Rule 26(b)(5) does not explicitly state exactly
15 when the privilege log must be provided. Rule 45 is more
16 precise, requiring that a person, in objecting to a subpoena,
17 must serve either written objections --

18 THE COURT: Slowly, slowly.

19 THE WITNESS: Sorry, your Honor.

20 A. -- must serve either written objections or move to quash
21 within the earlier of the time fixed for compliance or 14 days
22 after service and, if withholding subpoenaed materials on the
23 grounds of privilege, must provide a privilege log. It thus
24 suggests strongly that the privilege log, absent judicial
25 relief, must accompany any objections or motion to quash.

L5DVDON6

Thomson - redirect

1 But Local Rule 26.2 is even more explicit.

2 Paragraph C states:

3 Where a claim of privilege is asserted in response to
4 discovery or disclosure other than a deposition, and
5 information is not provided on the basis of such assertion, the
6 information set forth in paragraph (a) above shall be furnished
7 in writing at the time of the response to such discovery or
8 disclosure, unless otherwise ordered by the Court.

9 Q. Now, if I can stop you right there. And if we could go
10 down to the last line on ECF page 18, starting with
11 "Accordingly." If you could read that sentence.

12 A. Accordingly, the starting position is that the privilege
13 log must be served with the objections or motion to quash, and
14 that the failure to do so may result in a waiver of the
15 privilege claims.

16 Q. If we could now turn to ECF page 20. If you could go to
17 the bottom where it begins -- it says "Second." And read out
18 loud this paragraph.

19 A. Second, Donziger's failure -- even if the failure to submit
20 the log with the motion to quash or to seek an extension of
21 time initially was no more than inattention to the rule --
22 quickly became something else. The failure to provide the
23 requisite privilege log was called to Donziger's attention on
24 September 1st, 2010, when the individual petitioners filed a
25 brief in opposition to the motion to quash --

L5DVDON6

Thomson - recross

1 THE COURT: Slowly.

2 THE WITNESS: Sorry, your Honor.

3 A. -- and argued that the failure to produce a privilege log
4 or demonstrate that it would have been unduly burdensome to
5 have done so warranted rejection of the privilege claims. Even
6 then, however, no privilege log was forthcoming and no request
7 for an extension was made.

8 Q. That's enough. Thank you, Mr. Thomson.

9 (Counsel conferred)

10 MS. GLAVIN: Your Honor, I have nothing further.

11 THE COURT: Thank you.

12 Redirect, counsel.

13 MR. KUBY: Thank you, Judge.

14 RECROSS EXAMINATION

15 BY MR. KUBY:

16 Q. Mr. Thomson, from listening to your answers on redirect, it
17 appears -- well, withdrawn.

18 You made four trips from L.A. out here to prepare for
19 this proceeding?

20 A. No.

21 Q. To prepare for the June 15th trial date, did you come out
22 here?

23 A. No.

24 Q. Okay. The September trial?

25 A. Yes.

L5DVDON6

Thomson - recross

1 Q. The November trial?

2 A. No.

3 Q. This trial?

4 A. Yes.

5 Q. And did you ever get a subpoena for the January 15th trial
6 date?

7 A. I don't recall getting a subpoena for a January 15th --

8 Q. Do you remember a January 15th trial date?

9 A. I don't recall one, no.

10 Q. Do you recall that the country was in the middle of an
11 escalating COVID spike at that time?

12 A. That sounds correct, yes.

13 Q. And we talked a lot about Mr. Donziger not transferring the
14 stock power. I just want to ask you as a general matter, when
15 you have sought documents -- has Mr. Donziger ever in the
16 history of this litigation created a document that was
17 satisfactory to you?

18 MS. GLAVIN: Objection to the form.

19 THE COURT: Sustained.

20 MR. KUBY: What's wrong with the form?

21 THE COURT: It's not a litigation matter to have
22 documents acceptable to one's adversary. If you want to ask
23 about the stock power or one of those things, sure. But that's
24 really pretty open-ended and encompasses lots of irrelevant
25 material.

L5DVDON6

Thomson - recross

1 MR. KUBY: It's not an open-ended question, Judge;
2 it's a very specific, close-ended question. If the answer is
3 yes, then we might easily get into irrelevancy. If the answer
4 is no, then I'm done with that.

5 THE COURT: Okay. Well, the objection to the question
6 is sustained.

7 BY MR. KUBY:

8 Q. When you were reading from Judge Kaplan's order on the
9 privilege log with respect to the 1782s -- the 1782, there is
10 reference made to Donziger's failure, Donziger this, Donziger
11 that; is that correct?

12 A. I believe that's correct, yes.

13 Q. And at that time Donziger was, in fact, represented by
14 counsel, right?

15 A. That's my understanding, yes.

16 Q. And to say Donziger in that context simply references the
17 party to the litigation, not what the individual actually did
18 or did not do, right?

19 A. It doesn't necessarily mean that the individual --

20 Q. Right, because they are acting through counsel?

21 A. Correct.

22 Q. So if I understand this correctly, there was a privilege
23 log submitted, but it was submitted late, is that fair to say?

24 A. Yes, eventually there was a log that was submitted. It
25 was -- it was late.

L5DVDON6

Thomson - recross

1 Q. How late was it?

2 A. Well, I think, as Judge Kaplan's order goes through the
3 whole chronology, there are a couple different dates that
4 Mr. Donziger missed.

5 Q. From the time -- from the time the last date it was due
6 until it was supplied, about how much time passed?

7 A. I don't recall exactly. I think it was close to a month.

8 Q. Close to a month?

9 A. But I'm not sure.

10 Q. But not a year? Not two years?

11 A. No, this was a more compressed time frame.

12 Q. I'm sorry?

13 A. It was a more compressed time frame.

14 Q. Right. So less than a month, was a few weeks late.

15 A. A few weeks after that -- that additional deadline was set,
16 yes.

17 Q. And you are well aware, are you not, that a judge has
18 discretion to waive that requirement, that rigid adherence to a
19 time frame if the judge chooses to do so?

20 A. I believe Judge Kaplan's order actually says that, yes.

21 Q. Right. And he did not choose to do so?

22 A. That's correct.

23 Q. And you were just fine with that; correct?

24 A. Chevron's position was that the waiver should be continued
25 in effect, yes.

L5DVDON6

Thomson - recross

1 Q. And that waiver, that privilege waiver, because that log
2 was submitted three weeks late, is it fair to say has
3 reverberated through this litigation for the past decade?

4 A. I don't think that's an accurate summary of the
5 untimeliness of the log; but yes, obviously the waiver ruling
6 was significant.

7 Q. A couple more here.

8 MR. KUBY: Sorry, Judge. I mislaid a piece of paper.
9 I don't see how that could have happened.

10 Q. You were asked some questions about the time that you spent
11 that was not being compelled on redirect. We'll call it
12 noncompelled time.

13 A. If you're referring to the preparation time, yes.

14 Q. Yeah, yeah. Did any of this noncompelled time involved
15 drafting pleadings for Seward & Kissel?

16 A. I don't believe so, no.

17 Q. Editing Seward & Kissel drafts?

18 A. I don't believe so, no.

19 Q. Giving them ideas for pleadings?

20 A. Not to my knowledge.

21 Q. Thank you.

22 MR. KUBY: And now I think we really are done.

23 Although -- although --

24 MS. GLAVIN: You opened the door, Mr. Kuby.

25 THE COURT: Re-redirect.

L5DVDON6

Thomson - redirect

1 REDIRECT EXAMINATION

2 BY MS. GLAVIN:

3 Q. Mr. Thomson, do you recall Mr. Kuby just asking you whether
4 or not you received a subpoena for a January 21, 2021 trial
5 date in this matter?

6 A. I remember the question, yes.

7 Q. I'm going to show you what is Government Exhibit 1000-20.
8 Can you take a look at this document, sir.

9 Who was the subpoena to?

10 A. It's directed to me.

11 Q. What is it directing you to do on January 19th of 2021?

12 A. To report to testify in the trial.

13 Q. If we could go to the bottom of the subpoena. Subpoena
14 stamp date.

15 A. November 10, 2020.

16 Q. Do you recall being given a copy of this subpoena?

17 A. I have a vague recollection of seeing it. I mean, frankly,
18 they all kind of look very similar, so --

19 Q. Okay. Moving on.

20 Mr. Kuby asked you a question on recross about Judge
21 Kaplan determining that Mr. Donziger had waived privilege
22 simply because his privilege log was late.

23 MR. KUBY: Objection. That was not what I -- I never
24 used the word "simply." I never used the word "simply" in this
25 case.

L5DVDON6

Thomson - redirect

1 THE COURT: You're right. But go ahead.

2 Q. In the order of --

3 MR. KUBY: Mischaracterizing.

4 Q. -- completeness -- in the spirit of completeness, let's go
5 to Government Exhibit 123. We could go -- sorry. Let's go to
6 government exhibit -- yes. Sorry. Government Exhibit 401.

7 And if we could go to ECF page 23. And if we could go to the
8 bottom. And if you could read out loud, "Accordingly."

9 A. Accordingly, even if the failure to comply with Rule
10 26.2(c) or to seek an extension of time for compliance in the
11 face of the individual petitioners pointing out the failure on
12 September 1, were not alone sufficient to find waiver, the
13 Court nevertheless would hold that Donziger and the *Lago Agrio*
14 plaintiffs waived all privileges and protections that might
15 have been asserted in response to the subpoenas.

16 THE COURT: Slowly.

17 THE WITNESS: Sorry, your Honor.

18 A. Including those with respect to the 8,652 documents
19 belatedly enumerated in the log, on the basis of all of the
20 considerations referred to above. It would decline to exercise
21 its discretion to relieve them of that waiver.

22 Q. And if you could look at page -- ECF page 22, and just read
23 to yourself the first and the second.

24 (Pause)

25 A. Okay.

L5DVDON6

Thomson - redirect

1 Q. Moving to ECF page 23 and just continue reading.

2 (Pause)

3 Q. Can you summarize what Judge Kaplan stated here at ECF page
4 22 and 23 as his reasoning or additional reasoning for why
5 Judge Kaplan found a waiver of the privilege?

6 A. Judge Kaplan essentially finds that Donziger and the LAPs
7 had obtained a tactical or strategic advantage by delaying the
8 production of the log; and that allowing them to get the
9 benefits of their delay would redound to the detriment of here
10 the individual petitioners who are two Chevron lawyers, one an
11 in-house lawyer and one an outside counsel, who were under
12 indictment in Ecuador, which Judge Kaplan found that the
13 evidence showed that that was as a result of Mr. Donziger and
14 the LAPs intercessions with the Ecuador government.

15 Q. If you could turn to ECF page 24. If you could read
16 starting at "Finally."

17 A. Finally, even if all of the foregoing were not sufficient
18 to warrant that result, there is an additional ground as well.
19 This Court is satisfied also that the tactical advantage that
20 Donziger and the *Lago Agrio* plaintiffs have gained and the
21 disadvantage to which they have put their adversaries was not
22 simply a consequence of errors made and positions taken for
23 benign reasons.

24 The Court finds and concludes that they have intended,
25 at least since September 1, to achieve that tactical advantage

L5DVDON6

Thomson - redirect

1 at their adversaries' expense, based, among other things, on
2 the following.

3 Q. Continue.

4 A. The eleventh-hour attempt by the GOE -- which is the
5 government of Ecuador -- to intervene after the Court ruled
6 that Donziger and his clients were obliged to produce the
7 documents, and the Court of Appeals had denied a stay pending
8 appeal to assert a supposed common interest in the *Lago Agrio*
9 plaintiffs' privilege, supports that view.

10 The GOE has been working closely with Donziger for
11 years and stands to gain billions for Ecuador if the *Lago Agrio*
12 plaintiffs prevail against Chevron. Its belated attempt to get
13 into this case has all the hallmarks of an attempt to pull
14 Donziger's chestnuts out of the fire.

15 Some of the assertions of privilege in the 8,652-item
16 privilege log, including over 2500 items being documents sent
17 or disclosed to a public relations person, the founder of the
18 Amazon Defense Front or La Frente, Amazon Watch, and a host of
19 newspapers and magazines, further suggest that Donziger and the
20 *Lago Agrio* plaintiffs are not operating in entire good faith,
21 although the Court does not now rule on the merits of those
22 privilege claims.

23 The attempt to --

24 Q. Next bullet point.

25 A. I'm sorry?

L5DVDON6

Thomson - redirect

1 Q. The next bullet point.

2 A. The attempt to gain the benefit of withdrawing Donziger's
3 motion for reconsideration of the waiver holding in an attempt
4 to convince the Court of Appeals that the order appealed from
5 is "final," while then asking this Court in substance to grant
6 the "withdrawn" motion, is yet another example of attempting to
7 gain tactical advantage by procedural maneuvering. The
8 inconsistency between what the *Lago Agrio* plaintiffs told the
9 Court of Appeals about the effect of the summary order and
10 their present arguments here reinforce that impression.

11 Moreover, as noted above, the repeated refusal of
12 Donziger and his clients to stay the Ecuadorian civil
13 litigation and -- now joined by the GOE -- to seek a stay of
14 the criminal prosecution make their objectives clear. If they
15 truly eschewed any desire to gain a tactical advantage by
16 delaying production of their privilege log, the right course of
17 action would be to offer a stay in Ecuador in exchange for
18 belated consideration of their privilege objections. The fact
19 that they refused that simple exchange speaks volumes.

20 Q. If you could read the next three sentences.

21 A. In the last analysis, resolution of "reciprocal claims of
22 gamesmanship advanced by all parties in this situation is
23 precisely the type of evaluation that is entrusted to the
24 district court." This Court finds that the failure to submit a
25 privilege log, at least from September 1, 2010, when the

L5DVDON6

Thomson - redirect

1 individual petitioners made an issue of it in their papers in
2 opposition to the motions to quash and possibly earlier, was a
3 deliberate attempt to structure the response to the subpoenas
4 in a way that would create the maximum possibility for delay.
5 The advances warrant the conclusion that the goal was to force
6 the individual petitioners to proceed to trial in the
7 Ecuadorian criminal case and to obtain a judgment against
8 Chevron before any of them could get any, or at least the most
9 important documents responsive to the subpoenas.

10 Q. Turn to ECF page 27.

11 If you could just read the sentence beginning with
12 "Accordingly."

13 A. Accordingly, having accepted Donziger's invitation to
14 reconsider the waiver holding, this Court again holds -- on the
15 law, on the facts, and in the exercise of discretion -- that
16 each and every privilege claim with respect to the documents
17 sought by the subpoenas has been waived. It declines to
18 exercise its discretion in their favor.

19 Q. You can stop right there.

20 MS. GLAVIN: I have no further questions, your Honor.

21 THE COURT: Thank you.

22 MR. KUBY: Just give me one second please, Judge.

23 THE COURT: Yes, sir.

24 (Pause)

25 MR. KUBY: Judge, at this point I'm going to -- at

L5DVDON6

Thomson - recross

1 this point I'm going to show the witness document 160 from the
2 underlying docket, which will be deemed in evidence, yes,
3 Ms. Glavin?

4 MS. GLAVIN: No. I think this is beyond the scope.

5 MR. KUBY: Well, okay. We have no problem with the
6 entry -- with the admission of this document as a docket entry;
7 correct?

8 MS. GLAVIN: What is this?

9 MR. KUBY: What's that, Judge?

10 THE COURT: I didn't say --

11 MS. GLAVIN: I don't know what this is.

12 RECROSS EXAMINATION

13 BY MR. KUBY:

14 Q. All right. Well, let's do it this way: Take a look at
15 what I've put up on the screen as document number 160.

16 THE COURT: May I just ask you, I don't see anything
17 about the transfer of the case in my notes on Ms. Glavin's last
18 redirect.

19 MR. KUBY: Well, that's right. But you heard a great
20 deal about the government of Ecuador and their intervention,
21 and as well as privilege logs and other matters. And in fact,
22 this document addresses those at great length.

23 And I just want to --

24 THE COURT: While I do have all of the docket entries
25 memorized, I'll wait to hear from you.

L5DVDON6

Thomson - recross

1 MR. KUBY: Okay. Thank you.

2 BY MR. KUBY:

3 Q. Have you seen this before, Mr. Thomson?

4 A. I probably saw it at one time, but I haven't seen this
5 recently, no.

6 Q. All right. Well, so Judge Kaplan found that there was some
7 prejudice because of the intervention by the government of
8 Ecuador in this case; is that correct?

9 A. I believe what he said was that he -- he found that the
10 timing of their attempt to intervene was an attempt to
11 prejudice the ability of the individual petitioners in
12 particular, as well as Chevron, to timely obtain the documents
13 that were responsive to the subpoenas.

14 Q. Didn't you guys -- meaning whoever the "you" is behind the
15 Chevron litigation -- work for eight years to get this
16 transferred to Ecuador?

17 A. I'm not sure who you're referring to, so --

18 Q. Well, there was eight year -- after Mr. Donziger files his
19 case in the Southern District, there was about eight years of
20 litigation to get it transferred to Ecuador; is that correct?

21 A. If you're asking if I was personally involved in that, no.

22 Q. No, I'm just asking you to tell me what happened.

23 THE COURT: You have to wait till he finishes talking.

24 But you should talk more loudly.

25 THE WITNESS: Sorry, your Honor.

L5DVDON6

Thomson - recross

1 A. If you're asking me whether I was personally involved, the
2 answer is no.

3 Q. I'm not asking that. I'm asking you to recite a portion of
4 that history, which I think you testified earlier -- withdrawn.

5 You testified earlier on cross or re-redirect or
6 whatever it was that after Mr. Donziger filed in the Southern
7 District, Texaco/Chevron moved to send the case to Ecuador;
8 correct?

9 A. I testified that Texaco moved to send the case to Ecuador,
10 yeah.

11 Q. Right. And when did Chevron --

12 THE COURT: Okay. Just remember, that was not in the
13 most recent redirect. So if that's where you are, you're
14 beyond the scope.

15 MR. KUBY: No, I understand.

16 Q. I'm just trying to establish that Chevron, which absorbed
17 Texaco, was fine with the case in Ecuador, and that's where
18 they wanted to be, right?

19 A. No, that's not correct.

20 Q. Not correct.

21 Isn't it true that at the time the case was
22 transferred, there was a corporatus government in Ecuador?

23 A. I'm not sure what you mean by a corporatus government.

24 Q. One that's very, very friendly to American business
25 interests at the expense --

L5DVDON6

1 THE COURT: If we're talking -- Mr. Kuby, if we are
2 talking about the transfer back in -- whoops, I lost it. The
3 transfer from this Court to Ecuador, that is beyond the scope.
4 It was not mentioned in Ms. Glavin's last redirect.

5 Q. When you were reading from one of the documents, you made
6 reference to a privilege log that contained 8,625 documents; is
7 that correct?

8 A. I believe that's what Judge Kaplan's order says, yes.

9 Q. Right. And you have no reason to deny they served a
10 privilege log for 8,625 documents?

11 A. I would assume that's accurate. I don't have personal
12 knowledge of that number.

13 MR. KUBY: At grave risk, I'm going to say I'm done.

14 THE COURT: Yes, sir.

15 Re-re-redirect.

16 MS. GLAVIN: No, your Honor.

17 THE COURT: Bless you, my children.

18 You may step down, sir.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused)

21 THE COURT: Ms. Glavin.

22 MS. GLAVIN: Special prosecutors call Ondrej Krehel.

23 THE COURT: Yes indeedy.

24 MR. KUBY: Judge, before the witness takes the stand,
25 I'd like to address something.

L5DVDON6

1 THE COURT: Yes, sir.

2 MR. KUBY: And I think I'll do it from there.

3 And I say this without any personal difficulty with
4 Ms. Glavin. I think, given the high conflict nature of this
5 litigation, we've been playing and working together remarkably
6 well.

7 To the extent that any member of the defense team in
8 the well engages in any activity that Ms. Glavin finds
9 improper, distasteful, uncomfortable, whatever, I would request
10 it either be taken up with me or taken up with the Court, and
11 we will then address it.

12 Ms. Glavin spent a lot of time as a federal
13 prosecutor, and I understand -- and she has government power
14 here, but her government power here extends only to the
15 prosecution of this case and not to confronting members of the
16 defense team. And I would request that that conduct, which I
17 understand was spontaneous, simply not be repeated. Thank you.

18 THE COURT: I think that's fair enough, right?

19 MS. GLAVIN: Oh, yes, happy to do that.

20 And Mr. Kuby, just as much as you could go up there,
21 you could easily have walked over here and --

22 MR. KUBY: I'm sorry?

23 MS. GLAVIN: You could have asked me kindly and I
24 would have said, I agree, Ron.

25 THE COURT: All right, children.

L5DVDON6

Krehel - direct

1 MR. KUBY: Unfortunately --

2 THE COURT: Let's get finished here.

3 MR. KUBY: -- rolling approach.

4 THE COURT: Come on, kids. Let's go.

5 Please bring the witness in, sir.

6 Ms. Glavin, you call --

7 MS. GLAVIN: Ondrej Krehel. And I can have him state
8 his name and spell it for our court reporter.

9 THE COURT: Sure. In a minute.

10 Let's swear him in first.

11 ONDREJ KREHEL,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 THE COURT: Thank you. Ms. Glavin.

15 DIRECT EXAMINATION

16 BY MS. GLAVIN:

17 Q. Mr. Krehel, where do you work?

18 A. LIFARS, LLC.

19 Q. You could spell that for the court reporter.

20 A. L-I-F-A-R-S, LLC.

21 Q. What is LIFARS?

22 A. Digital forensics and incident response firm.

23 Q. And what is your role with LIFARS?

24 A. I am a digital forensic lead and I'm also COO and founder.

25 Q. What does it mean to be the digital forensics lead?

L5DVDON6

Krehel - direct

1 A. I usually assist victims of a cyber crime or appliance who
2 need digital forensic services.

3 Q. Do you have any degrees related to forensic services?

4 A. I do.

5 Q. When I say "forensic services," what do you understand that
6 to mean?

7 A. Digital forensic science.

8 Q. What is that?

9 A. It's a science that pertains how the evidence is collected,
10 called electronically stored information, and how that evidence
11 digitally analyzed and interpreted usually in legal matters.

12 Q. And what degrees do you have related to digital forensic
13 science?

14 A. A Ph.D. in computer forensics.

15 Q. How long have you been in this field?

16 A. Two decades.

17 Q. I want to turn your attention to civil case 11 CV 691,
18 *Chevron Corp. v. Donziger*. Are you familiar with that case?

19 A. Yes.

20 Q. How?

21 A. I was appointed by the Court as a neutral forensic expert.

22 Q. And showing you what is Government Exhibit 2170 in
23 evidence. You have a binder there.

24 A. One more time, exhibit please.

25 Q. 2170.

L5DVDON6

Krehel - direct

1 A. I'm on the page.

2 Q. It's Exhibit 2170.

3 A. Yes.

4 Q. Okay. Look at the first page.

5 A. Okay.

6 Q. You see that that states order of appointment?

7 A. That is correct.

8 Q. Okay. How does this relate to you, if at all?

9 A. This is my appointment as a neutral forensic expert.

10 Q. Who appointed you?

11 A. The Honorable Judge Kaplan.

12 Q. And at who's -- withdrawn.

13 If you look at paragraph 2 of Judge Kaplan's order on
14 page 1, it states that the neutral forensic expert shall
15 perform the functions described in the protocol.

16 A. Correct.

17 Q. What did you understand the protocol to be?

18 A. Usually in a forensic examination there is a protocol that
19 defines the cause of action for the forensic expert.

20 Q. I'm going to show you what is Government Exhibit 2172 in
21 evidence. You recognize this?

22 A. Yes.

23 Q. Okay. And what is this?

24 A. This is forensic inspection protocol.

25 Q. Issued by who?

L5DVDON6

Krehel - direct

1 A. By Honorable Judge Kaplan.

2 Q. And how does this relate to you and what you were to do?

3 A. These are directions for me how I perform my forensic
4 evidence preservation and analysis.

5 Q. Now, with respect to the forensic -- well, withdrawn.

6 Going back to Government Exhibit 2170, your
7 appointment as the neutral forensic expert, at whose direction
8 did you understand you were working as the neutral forensic
9 expert?

10 A. I work under direction of a court and Honorable Judge
11 Kaplan.

12 Q. Did you work at Chevron's direction?

13 A. No.

14 Q. Did you work at Steven Donziger's direction?

15 A. No.

16 Q. Did you work at Gibson Dunn's direction?

17 A. No.

18 Q. And what duties were you to perform as the neutral forensic
19 expert?

20 A. My duties were described in the protocol.

21 Q. If we could go to Government Exhibit 2172. If you can just
22 summarize what your duties were.

23 A. My duties were to collect what we call electronically
24 stored information, meaning create a forensic preservation of
25 electronic devices in the possession of Mr. Donziger; and then

L5DVDON6

Krehel - direct

1 following the protocol, describe what kind of analysis me as a
2 neutral forensic expert I would perform on those collected
3 forensic copies.

4 Q. I want to turn your attention to paragraph 4 of the
5 protocol. What was Mr. Donziger directed to do -- or
6 withdrawn.

7 What was Mr. Donziger directed to provide you within
8 three business days of the protocol?

9 A. Mr. Donziger would provide a listing of his electronic
10 devices that he used to access or store information or for
11 communication since March 4, 2012.

12 Q. And if you could go down to -- if I could have you look at
13 the sentence beginning, "Additionally, Donziger shall produce
14 under penalty of perjury a list of all accounts."

15 A. Correct. So that will also include not only devices, but
16 web-based email accounts, including, for example, some
17 potentially storage devices as a Dropbox, what we call cloud
18 devices, also communication applications such as WhatsApp,
19 Facebook Messenger, Instant Messenger. These would be
20 applications and storage devices that we would also have access
21 to.

22 Q. And Mr. Krehel, with respect to this list that Mr. Donziger
23 was directed to provide to you of his devices and accounts
24 within three business days of entry of this protocol, did that
25 occur?

L5DVDON6

Krehel - direct

1 A. No.

2 Q. You did not receive a list from Mr. Donziger of his devices
3 and/or his accounts within three days of the business days of
4 entry of the protocol?

5 A. That is correct, I did not.

6 Q. If I could turn your attention to paragraph 5 of the
7 protocol. What was Mr. Donziger directed to do in paragraph 5
8 of the protocol?

9 A. Mr. Donziger would surrender his devices to me as a neutral
10 forensic expert at his resident address, 245 West 104th Street,
11 Apartment 7D in New York, and I would take possession of these
12 devices, custody, and transfer them to our digital forensic
13 laboratory here in New York.

14 Q. And at what time were the devices to be surrendered to you?

15 A. 12 p.m. on New York time, on March 18, 2019.

16 Q. I want to show you what is in evidence as Government
17 Exhibit 132. You can start at the bottom email.

18 Is this an email exchange -- withdrawn.

19 Is this an email from someone at Gibson Dunn to you,
20 Mr. Krehel, in which Mr. Donziger is cc'd?

21 A. That is correct.

22 Q. And this is March 11th, 2019, at 11 a.m.?

23 A. That is correct.

24 Q. And what was Gibson Dunn asking you here?

25 A. They are asking in the listing of the devices and the

L5DVDON6

Krehel - direct

1 accounts was provided to me from Mr. Donziger.

2 MS. GLAVIN: We could go up to the next email in this
3 exchange.

4 Q. Is this your response on March 11 --

5 A. That is correct.

6 Q. -- 2019?

7 And are you responding to Matthew Burke, with a cc to
8 Steven Donziger and Andrea Neuman?

9 A. Correct.

10 Q. And what did you inform them on March 11?

11 A. I inform them that per Court's order that I was instructed
12 under, myself or LIFARS' general email mailbox did not receive
13 the listing in the questions in paragraph 1 or paragraph 2 from
14 Mr. Donziger.

15 Q. And did paragraph 4 of the forensic protocol direct the
16 manner in which Mr. Donziger was to deliver the list to you?

17 If you want to look at --

18 A. Yes.

19 Q. -- the protocol, which is 2172. And if you could --

20 MS. GLAVIN: Sareen, if we could blow up the last four
21 lines of ECF page 1.

22 A. Yes, it was directed that it will be provided via email.

23 Q. And going back to Government Exhibit 132, so when you said
24 the LIFARS general mailbox did not receive the listing, what is
25 the LIFARS general mailbox?

L5DVDON6

Krehel - direct

1 A. We do have various general mailboxes for internal response
2 or for legal matters that we worked on; and also -- and
3 administrative -- field administrative functions and evidence
4 technician had mailboxes where they received evidence. So I
5 cross-check at the company that no one receive that listing
6 from Mr. Donziger.

7 Q. And you had not received an email to your individual email
8 address from Mr. Donziger with the list; is that right?

9 A. That is correct.

10 MS. GLAVIN: If we could go to Government Exhibit 133,
11 which is --

12 THE COURT: I'm not sure, did we move 132?

13 MS. GLAVIN: No, I don't think we did. I move 132
14 into evidence.

15 MS. TRIVEDI: No objection, Judge.

16 THE COURT: Received.

17 (Government's Exhibit 132 received in evidence)

18 Q. Now, turning to Government Exhibit 133, which is in
19 evidence, if we could go to the top, Mr. Krehel. Is this an
20 email from Mr. Donziger to you on March 11, 2019?

21 A. Correct.

22 Q. And if we could go down to paragraph 3. And -- go up one
23 more. And if you could read out loud the last sentence
24 beginning "So."

25 A. So I hope you have not cleared your schedule to work on

L5DVDON6

Krehel - direct

1 this matter, because as Chevron knows, I will not be producing
2 documents until my due process rights are respected.

3 Q. And if you could read the sentence two sentences above
4 that, "I have clearly stated."

5 A. I clearly have stated that I will voluntarily go into civil
6 contempt of the legally unfounded orders in order to obtain
7 proper appellate review.

8 Q. Now, Mr. Krehel, I want to turn your attention to March 18
9 of 2019. Did you see Mr. Donziger on that day?

10 A. Yes.

11 Q. Can you describe, sort of, the circumstances leading up to
12 your seeing Mr. Donziger that day?

13 A. According to protocol and -- we were at the residence.

14 Q. When you say "we," who is we?

15 A. Myself and two forensic technicians.

16 Q. When you say we were at the residence, what do you mean?

17 A. At the address that was specified in the forensic protocol.

18 Q. Would that be 245 West 104th Street?

19 A. Correct.

20 Q. And so you went to that address?

21 A. That is correct.

22 Q. Tell us what happened.

23 A. We entered the lobby of the building, asked the doorman to
24 call Mr. Donziger. Doorman called multiple times Mr. Donziger
25 phone, and no one answer.

L5DVDON6

Krehel - direct

1 Q. Now, approximately what time did you arrive at the
2 building, 245 West 104th Street, that day?

3 A. On or around 11:50.

4 Q. 11:50 a.m.? P.m.?

5 A. A.m.

6 Q. So I'm going to show you what is Government Exhibit 134.
7 Do you recognize this exhibit?

8 A. Yes.

9 MS. GLAVIN: Your Honor, this is in evidence.

10 Q. If I could turn your attention to the email you wrote on
11 March 18, at 12:15 p.m.

12 A. Okay.

13 Q. At the time you wrote this email, were you at the apartment
14 building?

15 A. Yes, we were in the lobby.

16 Q. And can you read what you wrote in this email.

17 A. Dear Mr. Donziger, we have been in the lobby since 11:55
18 a.m. Doorman called you and no one answered. We will wait
19 till 12:30. Kind regards, Ondrej Krehel.

20 Q. And who did you send that email to?

21 A. I sent this email to Mr. Donziger, and I believe attorneys
22 were cc'd as well.

23 Q. When you say "attorneys," do you mean the attorneys of
24 Gibson Dunn or someone else?

25 A. Correct, Gibson Dunn.

L5DVDON6

Krehel - direct

1 Q. After you sent this email around 12:15 p.m., what did you
2 do?

3 A. I stayed in lobby.

4 Q. Did you eventually see Mr. Donziger?

5 A. Yes.

6 Q. Approximately what time did you see Mr. Donziger?

7 A. Around 1 p.m.

8 Q. And can you tell us what happened?

9 A. Mr. Donziger walked into the building with coffee in his
10 hand.

11 Q. I'm sorry, he had what in his hand?

12 A. Coffee. Recognize us that we are waiting for him, and we
13 had a little conversation.

14 Q. Can you tell us what he said to you and you said to him.

15 A. From my recollection, Mr. Donziger told me that he will not
16 surrender any devices, and that basically we will not receive
17 any devices that day from him.

18 Q. Did you ask him about any devices that he had?

19 A. Yes, I did.

20 Q. Okay. Could you tell us what you asked him and what he
21 said to you.

22 A. Because we had to bring our equipment for forensic
23 preservation, we wanted to understand what devices Mr. Donziger
24 has so we can be more precise in preservation about trying to
25 get evidence because we were also ready to preserve

L5DVDON6

Krehel - direct

1 Mr. Donziger devices at his residence. And I asked him
2 specifically what devices he has, what kind of model or
3 manufacturer, so we could actually bring -- we would not have
4 to bring as much equipment next time.

5 (Continued on next page)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

L5DAADON7

Krehel - Direct

1 BY MS. GLAVIN:

2 Q. And did Mr. Donziger give you a response?

3 A. Yes, he did.

4 Q. What do you recall him saying to you?

5 A. To my recollection he mentioned that he has an iPhone and
6 MacBook Air and potentially he might have had some other
7 devices but he mentioned that they would not be related matter.
8 They would be more like a storage devices.

9 Q. I am going to show you what is Government Exhibit 134.

10 Okay. And you go to the next email on the chain from Andrea
11 Newman to you at approximately 2:56 p.m. with the CC to
12 Mr. Donziger. She states:

13 Dear Mr. Krehel, can you, please, let us know if
14 Mr. Donziger provided you his devices for imaging today.

15 do you see that?

16 A. Yes.

17 Q. Now, approximately what time did you leave the apartment
18 building, the 245 West 104?

19 A. Most likely on or around one p.m. or 1:15 p.m.

20 Q. After you spoke with Mr. Donziger?

21 A. Correct.

22 Q. Okay. Did Mr. Donziger provide you with any devices at all
23 that day?

24 A. No.

25 Q. And when Ms. Newman sent you this email -- if we go to the

L5DAADON7

Krehel - Direct

1 next email in the chain you respond to her; is that right?

2 A. That is correct.

3 Q. Okay. And you CC'd Mr. Donziger; is that right?

4 A. That is correct.

5 Q. And could you read what you reported back?

6 A. Dear Mr -- life arrived today March 18, 2019 and
7 Mr. Donziger residence at address 245 West 104 Street,
8 apartment 17, New York, New York 10225 on or around 11:50 a.m.
9 Mr. Donziger met forensic team in the building lobby. I did
10 not provide -- forensic team any devices verbally. When asked,
11 Mr. Donziger provide a list of devices, one iPhone and one
12 MacBook Air System.

13 Thank you Ondreg Krehel.

14 Q. Mr. Krehel, if you saw Mr. Donziger again do you think
15 you'd recognize him?

16 A. Potentially.

17 Q. Do you see him in the courtroom today?

18 A. The might be the gentleman. I would say the gentleman
19 right behind the lady that's typing right onto the computer.

20 Q. Do you see the man with the ponytail?

21 A. Yes.

22 Q. Is the person that you're identifying is you believe to be
23 Mr. Donziger seated near the man with the ponytail?

24 A. That is correct.

25 Q. Okay. Where is he seated in relation to the man with the

L5DAADON7

Krehel - Direct

1 ponytail?

2 A. On his left side.

3 Q. Yeah.

4 THE COURT: What color mask does he have on?

5 THE WITNESS: Looks blue.

6 THE COURT: So identified.

7 Q. Now, Mr. Krehel, with respect to your duties with imaging
8 of Mr. Donziger's devices, if we could go to paragraph five of
9 the forensic protocol. And if we could go to the sentence "at
10 no time shall Chevron's forensic expert have access to the
11 original devices or live media accounts absent court order".

12 Do you see that?

13 A. Yes.

14 Q. Okay. Did you have the ability to share with Chevron
15 Mr. Donziger's devices?

16 A. No.

17 Q. And did you understand that if you could look at paragraphs
18 six, seven and eight of the protocol take a look at this.

19 A. Okay.

20 Q. And just back to paragraph five. I am looking at paragraph
21 5F and if you could look at the sentence which states: "The
22 neutral forensic expert shall maintain the set of images
23 created from Donziger's original devices and media unexamined
24 and unaltered until further order of the Court." What did you
25 understand that to mean?

L5DAADON7

Krehel - Direct

1 A. It means for me as a neutral forensic expert that my order
2 is to preserve electronic evidence and un-touch it until
3 further direction from the Court.

4 Q. And would that be Judge Kaplan?

5 A. That is correct.

6 Q. Okay. And with respect to paragraph six, did you ever get
7 to the stage where you would perform the duties set forth in
8 paragraph six?

9 A. No.

10 Q. With respect to paragraph seven did you ever get to the
11 stage where you would perform the duties set forth in paragraph
12 seven?

13 A. No.

14 Q. With respect to paragraph seven of the protocol --
15 withdrawn.

16 You have had an opportunity to look at this protocol
17 before your testimony today, correct?

18 A. Correct.

19 Q. Anywhere in this protocol did Judge Kaplan direct that
20 Chevron would have unfettered access to the mirror copy or the
21 mirror image taken of Mr. Donziger's device?

22 A. Chevron would not have access.

23 Q. Did Mr. Donziger ever surrender any devices to you,
24 Mr. Krehel, for imaging?

25 A. No.

L5DAADON7

Krehel - Direct

1 Q. He didn't do it in June?

2 A. No.

3 Q. Didn't do it in July?

4 A. Correct.

5 Q. And as you sit here today, has that happened?

6 A. Did not happen.

7 Q. I want to turn your attention to Government Exhibit 137.

8 Do you recognize this document?

9 A. Yes.

10 Q. Is this an email exchange that you were on that

11 Mr. Donziger is copied on?

12 A. Yes.

13 Q. Starting at the --

14 MS. GLAVIN: Move for admission your Honor, 137.

15 THE COURT: 137?

16 MS. TRIVEDI: No objection, judge.

17 THE COURT: Received.

18 (Government's Exhibit 137 received in evidence)

19 Q. Starting at the bottom of Government Exhibit 137, this is

20 an email from Vince Eisinger, E-I-S-I-N-G-E-R, of Gibson Dunn

21 to you with the CC to Mr. Donziger on May 29th of 2019. And

22 what are you being asked here Mr. Krehel?

23 A. I am being asked and Mr. Donziger has complied in paragraph

24 four of forensic parole protocol order which was attached to

25 that email if whether or not Mr. Donziger as contacted me since

L5DAADON7

Krehel - Direct

1 May 23 regarding the forensic protocol order and just he
2 contacted me since May 23.

3 Q. If we go up to your response on this email you respond on
4 May 29, 2019 at 11:38 a.m. could you read what you responded?

5 A. Dear Esquire Eisinger, Mr. Donziger did not comply with
6 paragraph four off the forensic protocol order and has not
7 contacted me since May 23, 2019 regarding forensic protocol
8 order. Kind regards, Ondrej Krehel.

9 Q. And if we go up to Mr. Donziger's response.

10 A. I will be sending a statement regarding this issue
11 momentarily, Steven Donziger.

12 Q. I am going to show you what is Government Exhibit 138. Is
13 this an email from Mr. Donziger to you, Mr. Krehel?

14 A. Yes.

15 MS. GLAVIN: Move for admission of exhibit 138.

16 MS. TRIVEDI: No objection.

17 THE COURT: Received.

18 (Government's Exhibit 138 received in evidence)

19 Q. This an email sent May 29, 2019?

20 A. That is correct.

21 Q. And if you can look at email and the attachment. Go to the
22 next page. What is this affidavit from Mr. Donziger is dated
23 what day?

24 A. Dated May 29, 2019.

25 Q. Okay. Before you received this email from Mr. Donziger on

L5DAADON7

Krehel - Direct

1 May 29th of 2019 have you gotten from -- Withdrawn.

2 Before you received this email from Mr. Donziger on
3 May 29, of 2019, had you received from Mr. Donziger any list of
4 his electronic devices or accounts?

5 A. No.

6 Q. Was the only information that you received from
7 Mr. Donziger prior to this May 29, 2019 email about
8 Mr. Donziger's devices, what Mr. Donziger told you in the lobby
9 of the apartment building on March 18 of 2019?

10 A. That is correct.

11 Q. I want to turn your attention --

12 MS. GLAVIN: One moment, your Honor.

13 I am going to show you, Mr. Krehel, what is Government
14 Exhibit 140-A. Go to page two of this declaration. Go to page
15 three. I am going to show you what is Government Exhibit 140.
16 Is this an email you received from Mr. Donziger on June 5th of
17 2019?

18 A. Yes.

19 MS. GLAVIN: Move for admission, your Honor?

20 MS. TRIVEDI: No objection.

21 THE COURT: Received.

22 (Government's Exhibit 140 received in evidence)

23 Q. Government Exhibit 140 is an email from Mr. Donziger to you
24 on June 5th. States subject correspondence from Steven
25 Donziger. It reads:

L5DAADON7

Krehel - Direct

1 Mr. Krehel, please note the attached correspondence
2 and revised declaration from Steven Donziger. Given the
3 possibility of a court hearing on June 10 that will be based in
4 part on some of the issues raised in my correspondence, please,
5 respond as soon as possible. Thank you. Steven Donziger.

6 Were there two attachments to this email?

7 A. Yes.

8 Q. Let's go to the first attachment declaration.

9 Now, between you receiving the declaration on May 29,
10 2019 in an email and your receiving this email from
11 Mr. Donziger on June 5th of 2019, had Mr. Donziger provided you
12 with any other list or declaration relating to his devices?

13 A. No.

14 Q. So, this would be the second list or declaration you
15 received from Mr. Donziger regarding his devices?

16 A. That is correct.

17 Q. And if we could go to page two and if we could go to page
18 three. Now the second attachment to this is it a letter to
19 you, Mr. Krehel?

20 A. Yes.

21 Q. And this is from Mr. Donziger on June 5th of 2019; is that
22 right?

23 A. That is correct.

24 Q. If we could just have you take a look at this letter first
25 page and scroll to the second page. (Pause)

L5DAADON7

Krehel - Cross

1 Go to the third page. (Pause)

2 Go to the fourth page. (Pause)

3 Go to the you fifth page.(Pause)

4 Go to the sixth page? (Pause)

5 A. Okay.

6 Q. Did you ever respond to Mr. Donziger's email?

7 A. No.

8 MS. GLAVIN: Your Honor, no further questions.

9 THE COURT: Thank you.

10 Cross-examination, counsel?

11 CROSS-EXAMINATION

12 BY MS. TRIVEDI:

13 Q. Mr. Krehel, good evening.

14 A. Good evening.

15 Q. Mr. Krehel, Mr. Donziger sent you a list OF his devices on
16 May 29, 2019, correct?

17 A. That is correct.

18 Q. And in doing so he had complied with paragraph four of the
19 forensic protocol, correct?

20 MS. GLAVIN: Objection.

21 THE COURT: Sustained.

22 Q. What's the basis of the objection?

23 MS. GLAVIN: Mr. Krehel isn't in a position to
24 determine whether or not he had complied with what he was
25 directed.

L5DAADON7

Krehel - Cross

1 MS. TRIVEDI: Judge, we just spent I think the better
2 part of 35 minutes learning that he is the person administering
3 the forensic protocol.

4 THE COURT: You are asking me questions now?

5 MS. TRIVEDI: Withdrawn. And his view of what
6 satisfied paragraph four is relevant in this trial.

7 THE COURT: Judge Kaplan's view is what's relevant in
8 this trial.

9 Q. Mr. Krehel, do you remember telling the FBI on May 5, 2020
10 that Mr. Donziger had complied with paragraph four of the
11 forensic protocol?

12 A. One more time?

13 Q. Do you remember telling the FBI and in the presence of the
14 private prosecutor on May 5, 2020, that Mr. Donziger had
15 complied with the forensic protocol when he sent you the May 29
16 list?

17 MS. GLAVIN: Again, objection. It doesn't matter
18 whether Mr. Krehel told us that or not, whether Mr. Donziger
19 complied with a list you have all of his devices. Only
20 Mr. Donziger would know and that's subject to a determination
21 by the Court.

22 THE COURT: Sustained.

23 Counsel, I am going to can you to remember to talk a
24 little more slowly. It is late in the day and the court
25 reporters have been working very hard.

L5DAADON7

Krehel - Cross

1 MS. TRIVEDI: Got it.

2 Q. Okay. Mr. Krehel, turning to paragraph six of the forensic
3 protocol. Can I get Government Exhibit 2172?

4 THE COURT: This is 71 I believe.

5 MS. TRIVEDI: Go to paragraph six.

6 Q. Mr. Krehel, if you could just read the first sentence of
7 paragraph six.

8 A. The neutral forensic expert shall create person entity
9 report listing in the first column and in alphabetical order
10 persons or entity identified by the neutral forensic expert on
11 the Donziger images.

12 THE COURT: Slowly, sir. Thank you.

13 A. You're welcome.

14 Neutral forensic expert on Donziger imaging as
15 authors, recipients, senders or persons who last modified,
16 saved or printed any document as reflected in the metadata of
17 those documents or communications.

18 Q. Mr. Krehel, does that list any person or entity
19 identifiably as an author, recipient, sender or person last
20 modified, saved or printed any document, does that list exclude
21 any type of person who would otherwise be involved on a
22 computer on a document found on a computer?

23 A. Well, I will respectfully, if you also recall section, I
24 believe 4F of the protocol, I will be instructed by the Court
25 to proceed further to actually never conducted the paragraph

L5DAADON7

Krehel - Cross

1 six and therefore, in my view they could potentially a court
2 order that would more clarify the section of the paragraph six.

3 Q. I'm sorry. Mr. Krehel, is it your testimony that you were
4 waiting for clarification as to what that list indicated?

5 A. No. But it's in my professional experience is to wait for
6 another court order that I can proceed the examination would be
7 logical next step.

8 MS. TRIVEDI: Judge, I would move to strike that
9 testimony. It's non responsive to the question.

10 MS. GLAVIN: I defer to the Court because the question
11 was very difficult for me to understand.

12 MS. TRIVEDI: I can ask it again.

13 THE COURT: Why don't you do that? Go ahead.
14 Truthfully, I wasn't so sure what you were asking. So, would
15 you ask it again please, counsel?

16 MS. TRIVEDI: Sure.

17 Q. Mr. Krehel, my question is does the list, authors,
18 recipients, senders or persons who last modified saved or
19 printed any document, does that list, that group of
20 individuals, if you were to take a computer and the look at all
21 of the documents on a computer, would there be anyone other
22 than authors, recipients, senders or persons who last modified
23 saved or printed any document, would there be any other kind of
24 person? That is my question.

25 A. I'm not sure I am following. What do you mean any other

L5DAADON7

Krehel - Cross

1 kind of person? These are very standard metadata in
2 electronically stored information and this is something that we
3 call E-discovery process. So, basically, I am a neutral
4 forensic expert looks at a forensic image and tried to
5 determine based on the electronic evidence who are the authors,
6 recipients, senders or person who has modified saved or printed
7 any document. As I pointed in here as reflected, metadata,
8 you've those documents or communications this is established on
9 reflection of metadata in those documents.

10 Q. I understand, Mr. Krehel, but I am asking you in your
11 experience your extensive experience as a forensic expert are
12 there any other does this list exclude any type of person who
13 is otherwise found the identity is located on a computer. So,
14 the question -- I'm sorry?

15 THE COURT: Counsel, to the uninitiated found on the
16 computer might be a problem. I'm not understanding what you're
17 saying either I'm sure the expert might be but you're certainly
18 not asking for persons to whom let's say carbon copies were
19 sent. I don't know. But the found on the computer is
20 something that is not meaningful to me.

21 MS. TRIVEDI: Okay. Withdrawn.

22 Q. Mr. Krehel, this list includes everybody who would be found
23 on a computer, correct?

24 A. Not necessarily. Again, forensic examination here is very
25 specific to certain metadata filed. So, if you read more

L5DAADON7

Krehel - Cross

1 carefully it means that authors, recipients, senders or person
2 who has last modified saved or printed a document as reflected
3 in metadata of those documents or communications. There's very
4 specific instruction on which metadata fields that report
5 should be created from.

6 Q. That's very helpful. Mr. Krehel, what metadata fields are
7 excluded by this list?

8 A. For example, creation or --

9 Q. "Creator" is different than "author"?

10 A. No. It's the last modified reference I would call
11 timestamp and there's also a timestamp for creation of the
12 document and for the access of the document.

13 Q. But would those be excluded by this list?

14 A. No. The forensic analysis you usually pick one timestamp
15 that you render analysis on and in this protocol it was that
16 the timestamps that we should go and perform this analysis is
17 "last modified".

18 Q. I see. So, any modification prior to the last modification
19 other than saving or printing, correct, because it's who last
20 modified, saved or printed any document would be excluded from
21 your list?

22 A. I am not sure if I'm following you why --

23 Q. Sorry, Mr. Krehel. I'm just trying to understand. It
24 says: Persons who last modified saved or printed any document.
25 So, it's not just the person who last modified it, is it? It's

L5DAADON7

Krehel - Cross

1 also the people who saved at any time or printed at any time
2 any document, correct?

3 A. Not necessarily because what if the person who last
4 modified the document also saved and printed the document?
5 It's the same person.

6 Q. I understand that a person would be included in the list
7 but so would anyone who had ever saved a document or ever
8 printed a document, correct?

9 A. But if someone saved document, last modified timestamp
10 would be updated to the last -- it would have to be examined
11 virtual --

12 THE COURT: Slowly, slowly. The court reporter is
13 trying to take you down.

14 It would have to be examined --

15 A. It would have to be examined if there is actually
16 in-authorization it saving of the documents without the last
17 modified timestamps being updated.

18 Q. Okay. Mr. Krehel, you've lost me. So, I'll just move on.

19 A. Apologies.

20 Q. It is not your fault. I think I am not smart enough for
21 you but it's a good experience for me to have.

22 Can we go to paragraph seven, please.

23 Mr. Krehel, turning to paragraph search. So, first
24 would you like to review this or can I ask you some questions
25 about it?

L5DAADON7

Krehel - Cross

1 A. Sure. Ask questions and I will read as you ask questions.

2 Q. So, paragraph A, first you would run the search terms on
3 the images taken from Mr. Donziger's devices, correct?

4 A. That is correct.

5 Q. And, Mr. Krehel, how many search terms were you authorized
6 to run in this case?

7 A. I will have to preview that Exhibit B in terms of what the
8 search terms actually were.

9 Q. Okay. Could we get Exhibit B for Mr. Krehel? Just scroll.
10 Can you see that?

11 A. Yes, I can see that.

12 Q. So, just to repeat the question. How many search term
13 terms were you authorized to search?

14 A. These are the certain terms basically on the list right so
15 these are all search terms authorized Exhibit B.

16 Q. Do you know how many there are?

17 A. I did not count them.

18 Q. Would you like to go ahead and count them or if the
19 government would like to stipulate that there are 870, I am
20 fine either way?

21 A. I would respectful, usually, the way you work in following
22 forensic protocol and I did not even get to the collection of
23 devices. So, for me to follow something that I don't even have
24 any conduct to go was not truly relevant at that period of
25 time.

L5DAADON7

Krehel - Cross

1 MS. TRIVEDI: I'm going to move to strike that, judge.
2 I am simply asking about how this all was going to go down.

3 A. I apologize. But this protocol is entered by the Honorable
4 Judge Kaplan and my understanding was if there were any
5 objections from Mr. Donziger, when I was instructed at a point
6 in time --

7 MS. TRIVEDI: Judge, I move to strike. I'm not asking
8 a question at this time.

9 THE COURT: All right.

10 Q. Mr. Krehel, I completely understand. I don't have a
11 problem with you. I'm just trying to do my job. So, the
12 question as it stood is how many search terms in Exhibit B and
13 I would repeat my invitation for the private prosecutor to
14 stipulate that there are 870?

15 MS. GLAVIN: I'm sorry.

16 MS. TRIVEDI: Or we can sit here while he counts them.

17 THE COURT: Children, children, children. It's very
18 late in the day. Cut it out.

19 MS. GLAVIN: I'm sorry. I did not mean to be -- I
20 didn't hear you. I was reading something. To the extent you
21 want a stipulation that there are more than 800 search terms, I
22 take your word for it and I am willing to go with that.

23 MS. TRIVEDI: Thank you.

24 Okay. Mr. Krehel, you don't need to count those.

25 A. Thank you. Having degree a in mathematical physics, we

L5DAADON7

Krehel - Cross

1 stop counting.

2 Q. Okay. So, you would run the search terms, all 870 of them
3 and then there were -- can I get paragraph seven again and then
4 there were procedures for removing the highly confidential and
5 personal designations, we don't need to go through it.

6 THE COURT: Slowly, counsel.

7 Q. Sorry, judge. So, that paragraph B is taking out the
8 highly confidential and personal designations.

9 And then could you read paragraph C for me to
10 yourself, Mr. Krehel?

11 A. Sure. Chevron's forensic expert would provide a neutral
12 forensic expert if copies or for access post judgment third
13 party productions made to Chevron in this matter.

14 THE COURT: Slowly.

15 A. The neutral forensic expert will remove any duplicates from
16 the universe of documents from the devices and media that are
17 responsive to the search terms and subject to production
18 pending further review. The neutral forensic expert then will
19 return or crease to have access to the post judgment
20 third-party productions.

21 Q. Mr. Krehel, if I've understood this correctly you would
22 remove any redundancies from what Chevron had already received
23 in litigation; is that correct?

24 A. Correct.

25 Q. So, this whole thing was really designed for Chevron's

L5DAADON7

Krehel - Cross

1 screens, correct?

2 MS. GLAVIN: Objection.

3 THE COURT: Sustained.

4 Q. So, going to paragraph D, can you highlight paragraph D,
5 please.

6 So, then, Mr. Krehel, you would analyze the documents
7 that are responsive to the search terms and subject to possible
8 production and then... that's me to determine if there are any
9 significant categories of irrelevant materials that properly
10 can be excluded; is that correct?

11 A. The section you are reading?

12 Q. Where I jumped to was to determine if there are any
13 significant categories?

14 THE COURT: Is that your on-the-record voice or
15 off-the-record?

16 MS. TRIVEDI: That's my off-the-record voice, judge.

17 Q. Let's just do this again. I'll just do it from the screen.

18 Mr. Krehel, if I could bring your attention to --
19 well, let me just read.

20 you would analyze the documents that are responsive to
21 the search terms and subject to possible production?

22 THE COURT: Slowly, counsel.

23 Q. Pending further review to determine if there are any
24 significant categories of the relevant materials that properly
25 can be excluded.

L5DAADON7

Krehel - Cross

1 So, Mr. Krehel, if I'm understanding this correctly,
2 you would analyze the documents to determine what was relevant
3 and what was irrelevant, correct?

4 A. That was correct.

5 Q. Mr. Krehel, you are not an attorney, correct?

6 A. That is correct.

7 Q. But your job was to decide what was relevant and what was
8 irrelevant to what Chevron had demanded from Mr. Donziger,
9 correct?

10 MS. GLAVIN: Objection as to form.

11 THE COURT: Sustained.

12 MS. TRIVEDI: I'm sorry. What form? This is a
13 forensic protocol designed to enforce anti-monetization
14 prohibition, discovery and money judgment discovery. So,
15 Mr. Krehel is in charge of determining what is relevant and
16 what is irrelevant to that. And my question to him was whether
17 he understood that to be his responsibility and how.

18 THE COURT: Ms. Glavin.

19 MS. GLAVIN: That wasn't the question she posed to
20 Mr. Krehel.

21 MS. TRIVEDI: Could I have a read back?

22 THE COURT: Certainly.

23 Question:

24 But your job was to decide what was relevant and what
25 was irrelevant to what Chevron had demanded from Mr. Donziger,

L5DAADON7

Krehel - Cross

1 correct?

2 A. Not correct. His protocol is entered by Honorable Judge
3 Kaplan. So, this protocol should be what the Court would
4 ordered to me to do, not what the Chevron would order me to do.

5 Q. Understood, Mr. Krehel.

6 What was the difference in your mind between what is
7 relevant and what is irrelevant?

8 A. When you read that paragraph he says search terms and
9 subject to possible production pending further review to
10 determine if there are any significant categories or irrelevant
11 material that properly can be excluded. Let me give you an
12 example of relevant materials that properly can be excluded.
13 On the computer we have temporary files created to let's say
14 word documents. Those documents do not contain a value meaning
15 they have no data in them. They are only metadata about
16 certain actions that happen in the computer. You could be
17 producing hundreds thousands of documents, potentially
18 documents that really not documents because they don't have any
19 data in them and they are truly would be called more of a
20 system data.

21 So, therefore the forensic process and forensic
22 science tried to eliminate irrelevant materials that can be
23 properly excluded. So, this paragraph I respectfully in my
24 view actually protects Mr. Donziger in terms of how it's
25 conducted and also exclude electronically stored information

L5DAADON7

Krehel - Cross

1 that would be irrelevant because they do not contain data in
2 them.

3 Q. Understood. Mr. Krehel, could you read the second sentence
4 of this paragraph out loud, please?

5 A. These would include for example from online merchant, but
6 is not necessarily to determined payment methods or Donziger's
7 assets.

8 Q. Mr. Krehel, correct me if I'm wrong but that sentence isn't
9 about excluding documents that contain no data. It references
10 you deciding what is relevant to, quote, determine payment
11 methods or Donziger's assets, end quote, correct?

12 A. That's not how I am reading this.

13 Q. How do you read that sentence?

14 A. I read the sentence that for example correspondence from
15 online merchants too that respond to search terms if I render
16 search terms account in Amazon and its responsive and it's part
17 of the possible production pending for review something that
18 it's consideration for a possible production. This is the
19 standard forensic process. And again, I want to reiterate that
20 the protocol is to design actually to protect Mr. Donziger from
21 disclosure.

22 Q. Understood, Mr. Krehel. I'm sorry. Maybe this is like
23 when he did paragraph six but I understand this sentence to
24 authorize you to take out things from online merchants like
25 Amazon.com that is, quote, not necessary to determine payment

L5DAADON7

Krehel - Cross

1 methods or Donziger's assets, end quote. And I'm wondering how
2 is it that you read it any different again.

3 A. You might have a document or metadata that do not have a
4 value just because, for example, a search term or certain
5 component in a computer is responsive to the term actually does
6 not have a data that would be meaningful for examination. I do
7 believe we are focusing on wrong aspect of this because this
8 truly tried to establish that the forensics examiner should
9 focus on relevant material and not producing, for example,
10 binary data.

11 Q. So, Mr. Krehel, am I understanding correctly that your
12 definition of what was relevant was anything that contained any
13 data?

14 A. That would be -- so, look at the possible production.

15 Q. Mr. Krehel, it's a yes or no question. If you could answer
16 yes or no or I can't answer yes or no, I would appreciate it.

17 A. Could you kindly repeat the question.

18 Q. Mr. Krehel, is it your opinion that the definition of
19 relevant in this forensic protocol in administering this
20 forensic protocol was any document that contained any data?

21 A. No. I think you're twisting this a little bit. I
22 apologize. This is not a question of the protocol. In the
23 forensic science if you follow standard procedures for
24 production. And in that production we don't include, for
25 example, binary data. I think you are twisting this a little

L5DAADON7

Krehel - Cross

1 bit and mixing the data that I should have some content with
2 something that's not meaningful. And with these two sentences
3 are trying to establish is, please, do not copy hundred
4 thousand documents that have no value document in it because it
5 might not be relevant.

6 Q. Mr. Krehel, I understand that documents that contain no
7 data are irrelevant. I have followed you that far. But I am
8 asking you when you take everything that is left which is to
9 say every document on a device that contains data, what within
10 that according to you was relevant to this production?

11 A. Well, the protocol specified the key words that would be
12 used as a certain term for production.

13 Q. So, is it your position that anything that contained any of
14 the search terms was relevant?

15 A. Not everything that contains a search term because you
16 still have to.

17 THE COURT: Slowly.

18 Q. Okay. So, let's say we take all of the documents on the
19 device and then within that we take all of documents that
20 contain search terms, right? Because that was your first step
21 was to run the search terms.

22 A. Any electronically stored information that contained the
23 search terms they might not be just documents.

24 Q. Understood. And then within the electronically stored
25 information that contains search terms you were going to

L5DAADON7

Krehel - Cross

1 exclude as irrelevant material that did not contain any data,
2 correct?

3 A. For example, or their system data or they were created by
4 system by as a reflection of some user actions.

5 Q. I understand, Mr. Krehel. But that leaves let's say we've
6 done all of that left in your possession is every document from
7 Mr. Donziger's devices that contains any data as an ordinary
8 human being would know it and also the search terms, correct?

9 A. Correct.

10 Q. And my question to you is is it your position that that
11 entire universe of documents was relevant pursuant to this
12 forensic protocol that's where you would stop and say this is
13 what is relevant?

14 A. No. You would continue with the protocol, right. So,
15 there would be, they would be subject to possible production
16 adding for still further review.

17 Q. So, what would you your next step according to the forensic
18 protocol?

19 MS. GLAVIN: I am going to object on relevance
20 grounds.

21 MS. TRIVEDI: Judge --

22 THE COURT: I think we can read the protocol and we
23 can see what the steps are.

24 MS. TRIVEDI: Judge?

25 THE COURT: And -- excuse me.

L5DAADON7

Krehel - Cross

1 And the witness has already testified that he didn't
2 get this far. So, what was his understanding of what he didn't
3 get to do have to do with anything?

4 MS. TRIVEDI: Judge, Ms. Champion testified on direct
5 that the forensic protocol was designed such that Chevron would
6 never acquire Mr. Donziger's information devices data.

7 THE COURT: This witness has confirmed that.

8 MS. TRIVEDI: And I will -- I can make an offer of
9 proof that that is patently untrue. But given the way this
10 forensic protocol worked. I understand it's taking me time and
11 I apologize. I am a layperson in these regard but I can make
12 an offer of proof that I will prove to Mr. Krehel that that is
13 false.

14 THE COURT: All right. Let me hear it. I am a
15 layperson too. So, let's hear the offer of prove.

16 MS. TRIVEDI: Thank you, judge.

17 Can I just hear you say "overruled" just for fun? It
18 doesn't happen to me very often.

19 THE COURT: I'm not there yet. I'm waiting for your
20 offer of proof.

21 MS. TRIVEDI: Missed that. See, I'm so eager to win.

22 Judge, let me read for a second to you from this. So,
23 the second sentence of paragraph D says this would include for
24 example correspondence from online merchants that respond to
25 the search terms account or Amazon but is not necessary to

L5DAADON7

Krehel - Cross

1 determine payment methods or Donziger's assets. Mr. Krehel was
2 responsible for taking out things like Mr. Donziger's
3 Amazon.com purchase of things for his son and leaving in place
4 things related to Amazon a/k/a The Rain Forrest that Chevron
5 has destroyed.

6 MS. GLAVIN: Objection.

7 THE COURT: Counsel, you know better than that. You
8 know better than that. You do it again you're sitting down.

9 MS. TRIVEDI: Got it, judge.

10 So, Mr. Krehel would sort what he considered to be
11 relevant to quote, determine payment methods or Donziger's
12 assets, end quote, from what was irrelevant like Amazon.com
13 purchasers. I have a series of questions for him about how he
14 intended to do that with --

15 THE COURT: Slowly, slowly, slowly.

16 MS. TRIVEDI: I intend to ask him about how he
17 intended do that with 870 search terms. Of course, I will not
18 ask about each and every one but there are a few I am
19 particularly curious about. So --

20 THE COURT: Counsel, that has nothing do with
21 Mr. Donziger's information going to Chevron. I don't care
22 about the search terms.

23 MS. TRIVEDI: Again, judge, I am making an offer of
24 proof as to how Ms. Champion testified in ways that's patently
25 false.

L5DAADON7

Krehel - Cross

1 MS. GLAVIN: Objection.

2 MS. TRIVEDI: I am making an offer of proffer. She
3 testified --

4 THE COURT: No. No. You said to me. I can't locate
5 it but I understood you to say to me that you were going to
6 make an offer of proof to demonstrate that if the protocol were
7 followed it would result in Mr. Donziger's information being
8 handed over to Chevron.

9 Am I wrong that that's what you offered?

10 MS. TRIVEDI: That's correct, judge.

11 THE COURT: All right. let me hear it.

12 MS. TRIVEDI: So, Mr. Krehel would separate out -- I
13 am reading -- these potential irrelevant materials from the
14 universe of documents that are responsive to the search terms
15 and subject to possible production pending further review
16 right. So, he would have a bucket that was irrelevant and he
17 would have a bucket that was deemed relevant by him and I
18 believe his employees. And then Mr. Krehel would take
19 25 percent of what he had deemed irrelevant and provide them to
20 Chevron's forensic expert. Is your Honor following me thus
21 far?

22 THE COURT: I see it.

23 MS. TRIVEDI: Chevron's forensic expert would then
24 confirm whether the sample was in fact irrelevant and would go
25 through what was deemed irrelevant and identify any documents

L5DAADON7

Krehel - Cross

1 that are relevant so they were there to back stop Mr. Krehel is
2 my understanding. If any document is identified as relevant
3 then Chevron's forensic expert may review the remaining
4 75 percent of the materials for relevance under the supervision
5 of Mr. Krehel.

6 So, my understanding, judge, is that if Chevron's
7 forensic expert found that Mr. Krehel had made even one
8 mischaracterization of something as irrelevant when it was in
9 fact relevant that they may gain permission to review the
10 remaining 75 percent of what was deemed irrelevant which
11 renders irrelevant Mr. Krehel's role because then everything
12 that he has sorted has been turned over to Chevron's forensic
13 expert and that was where I was going with him, judge.

14 THE COURT: Okay. But I don't know what the terms are
15 with respect to Chevron's forensic expert by turning it over to
16 Chevron at that? I didn't think so.

17 MS. TRIVEDI: Let's keep going.

18 So, with respect to things that Mr. Krehel had deemed
19 relevant or responsive is the word used in this paragraph,
20 Mr. Krehel was to turnover 10 percent of what he had deemed
21 relevant to Chevron's forensic expert, Chevron's forensic
22 expert was then going to provide the sample set of documents
23 and communications to Gibson Dunn & Crutcher for coding as
24 relevant or not relevant.

25 Then later in the paragraph the coding produced by

L5DAADON7

Krehel - Cross

1 Gibson & Dunn was going to be run by Chevron's forensic expert
2 on the hundred percent of things that had previously been
3 deemed relevant by Mr. Krehel. And it's profoundly unclear
4 from this document whether the 25 percent that had been deemed
5 irrelevant but then turned over in its entirety to Chevron's
6 forensic expert was going to be part of what Chevron's forensic
7 expert deemed relevant was going to turnover to Gibson Dunn &
8 Crutcher.

9 THE COURT: Let me ask the more basic question. You
10 are correct at least from my layperson's view that this is less
11 than crystal clear. But the problem is that there was no
12 attempt to modify to seek any relief in the Court of Appeals.
13 So, what ever it was that seemed off about this doesn't seem
14 like there was any steps taken, there were any steps taken to
15 remedy whatever problems were perceived. And what this witness
16 understood about something he never got to do seems to me to be
17 pretty irrelevant.

18 MS. TRIVEDI: Your Honor, if the Court is taking
19 notice of the extent to which the forensic protocol was
20 designed at least in part in a manner that turned over.

21 THE COURT: The Court is not taking notice of any such
22 thing but let's assume Mr. Donziger thought that was true. His
23 remedy was to seek legal relief.

24 MS. TRIVEDI: Judge, I feel like you locked in the
25 collateral bar. You didn't just impose it. It's just like a

L5DAADON7

Krehel - Cross

1 door I keep revolving around in. I understand your Honor's
2 rulings. My response is that the prosecution opened the door
3 to this line of questioning when they asked Mr. Krehel about
4 paragraph six and seven and that Ms. Champion opened it further
5 when she testified that it was designed specifically to
6 prohibit the exact thing that I believe it does. But I
7 understand your Honor's ruling and I can move on.

8 THE COURT: Yes, ma'am.

9 THE WITNESS: Can I just --

10 THE COURT: No. No. The good part about being a
11 witness is you only have to answer the questions they ask you.
12 Q. Mr. Krehel, one second I just want to try to figure out how
13 to torture you less than I have.

14 MR. KUBY: That is my suggestion, judge.

15 THE COURT: You are a merciful soul.

16 Q. Mr. Krehel, you took this assignment because of the public
17 interest element; is that correct?

18 A. Being appointed as a neutral forensic expert by the
19 Honorable Judge Kaplan or by the Court is a high prestige, that
20 is correct.

21 Q. I will tell you you may be one of most earnest people I've
22 ever met, Mr. Krehel. I have no further questions at this
23 time?

24 THE COURT: Thank you. Redirect.

25 MS. GLAVIN: No, your Honor. Bless you. You may step

L5DAADON7

Krehel - Cross

1 down, sir.

2 All right. Counsel, are refinished for the day?

3 MR. KUBY: Can Mr. Krehel leave? I told him he could
4 step down.

5 MS. GLAVIN: Your Honor, before we rest I do have,
6 there is a portion of a transcript.

7 THE COURT: Why don't you sit down so that you could
8 be heard.

9 MS. GLAVIN: There is a portion of a transcript from
10 this criminal case 19 CR 561 from Mr. Donziger's initial
11 appearance on August 6 of 2019. There are ten lines from where
12 Mr. Donziger makes a statement that I'd like to read into
13 evidence. It's docket 18. I can show it to Mr. Kuby to see if
14 he has any objection.

15 MR. KUBY: If it's only ten lines, I don't care what
16 it is.

17 MS. GLAVIN: All right, your Honor. It's docket entry
18 18 in the criminal docket of Mr. Donziger's statement to the
19 Court. This is at ECF page 19 lines nine through 18.

20 What I would propose, if I may, is you say normal
21 course. This is unfamiliar to me except, obviously, I'm
22 learning about it today being here. But what I would propose,
23 because I don't think this is a normal kind of case, given the
24 long history of my particular role in this case, is to allow me
25 to keep my passport for me to propose when I want to travel to

L5DAADON7

Krehel - Cross

1 another place that I would inform the Court or inform pretrial
2 services or whatever the process is, get permission to go for a
3 certain period of time and be allowed to return.

4 That's it, your Honor.

5 MR. KUBY: That's fine, judge.

6 THE COURT: Anything else?

7 MS. GLAVIN: No, your Honor. And the special
8 prosecutors rest with the caveat we have some exhibits that
9 we'd like to confer with Mr. Kuby about what is in evidence and
10 what is not in evidence. So, we can do that when we return.

11 THE COURT: Very well. And thus with that caveat, you
12 rest.

13 MS. GLAVIN: Yes, your Honor.

14 THE COURT: All right. Nine o'clock Monday.

15 MR. KUBY: Sure, judge. So, we will.

16 THE COURT: 9:30.

17 MS. GLAVIN: I do think this is important with respect
18 to Anne Champion who testified and I don't in saying that this
19 does attribute any bad faith to Ms. Trivedi, she did make a
20 comment that Ms. Champion's testimony was patently false. It's
21 a very serious comment to make about another member of the bar.

22 MR. KUBY: I'm sorry, judge.

23 MS. GLAVIN: I need to make -- please, let me finish.

24 MR. KUBY: I object to the speech at this time.

25 THE COURT: All right. Let me hear what the wherefore

L5DAADON7

Krehel - Cross

1 is.

2 MR. KUBY: Okay. The wherefore would be great.

3 MS. GLAVIN: So, your Honor, I just want to put on the
4 record that we, the special prosecutors do not believe in any
5 way, shape or form that Ms. Champion gave false testimony and I
6 just wanted to put that on the record because I don't think
7 that is fair to Ms. Champion to have another lawyer in this
8 courtroom attribute false, patently false testimony to another
9 officer of the court. So, I do want to make that record.

10 MR. KUBY: So, there was no wherefore clause.

11 THE COURT: Your point?

12 MR. KUBY: You asked, you wanted to get to the
13 wherefore. I objected. You wanted to get to the wherefore.
14 We heard the speech. There was no wherefore and I think we're
15 done with this.

16 THE COURT: No. I'm going to ask Ms. Trivedi if she
17 wants to say anything. She is the one who made the allegation.
18 Don't you think she ought to be asked if she has something to
19 say?

20 MS. TRIVEDI: Judge, Ms. Champion testified to facts.
21 When the facts are not true, the testimony is false. And it
22 was not true that the forensic protocol was designed the way
23 she describe scribed it. If she didn't know that, if she
24 hadn't read the forensic protocol which I would completely
25 understand it is shockingly boring. I understand that.

L5DAADON7

Krehel - Cross

1 THE COURT: All right. If you are not taking it back,
2 I don't need a speech. 9:30. I had hoped to talk to
3 Mr. Garbus tonight about his motion, but he seems to have fled
4 the jurisdiction.

5 MR. KUBY: He left.

6 THE COURT: All right. We'll take it up with him on
7 Monday.

8 Thank you, counsel.

9 MS. GLAVIN: With respect to Monday, if the defense is
10 not putting on a case or if they do --

11 THE COURT: Do you want this on the record?

12 MS. GLAVIN: Yes. How would you propose to proceed,
13 Mr. Kuby? The defense puts on a case, I think you've indicated
14 it would be two days. How would you propose to proceed if
15 there is no case come Monday?

16 MR. KUBY: Well, I so seldom get to be in the driver's
17 seat, but to the extent you have suggested I go there, I would
18 propose that if there is no defense case we be prepared to make
19 a Rule 29 motion should we find it relevant. The prosecution
20 will respond if they choose. The Court will rule or defer
21 ruling and then we will submit another giant stack of papers in
22 the form of what are they called again.

23 MS. TRIVEDI: Findings of fact and conclusions of law.

24 THE COURT: All right. What would be really helpful
25 for everyone around here is if you would give us an indication

L5DAADON7

Krehel - Cross

1 over the weekend of where you are. Makes a big difference if
2 there's going to be a case or if there's not going to be a case
3 how we all sleep over the weekend.

4 MR. KUBY: And what I will promise you as an officer
5 of the court as a generally human, the second I know, within 15
6 minutes, I will notify the prosecution and I think I will
7 notify Scott because I have his email. I don't think I have
8 yours yet.

9 THE COURT: That would be great.

10 All right. Is there anything else on the record,
11 friends?

12 MS. GLAVIN: No, your Honor.

13 Thank you.

14 THE COURT: Nothing else?

15 MR. KUBY: No.

16 THE COURT: All right.

17 (Adjourned to Monday, May 17, 2021, at 9:30 a.m.)
18
19
20
21
22
23
24
25

INDEX OF EXAMINATION

Examination of:	Page
DAVID ZELMAN	
Cross By Ms. Trivedi	598
Redirect By Ms. Glavin	619
Cross By Ms. Trivedi	625
WILLIAM THOMSON	
Cross By Mr. Kuby	693
Redirect By Ms. Glavin	760
Recross By Mr. Kuby	772
Redirect By Ms. Glavin	777
Recross By Mr. Kuby	783
ONDREJ KREHEL	
Direct By Ms. Glavin	788
Cross By Ms. Trivedi	808

GOVERNMENT EXHIBITS

Exhibit No.	Received
7	633
2060	634
8	640
2211	646
9	646
317	649
3	661
400	662
Four and Five	664
300	664
302	666
302	667
401	668
303	671
304	671
305	672
1000-327	673
306	675
501	675
502	676
307	677
11-2260	678
308	680

[illegible]

DEFENDANT EXHIBITS

10	Exhibit No.	Received
11	I-51	714